

A N Ct
A P P E N D I X
T O T H E
Modern Justice:
Containing the particular
B U S I N E S S
O F T H E
Quarter Sessions ;
V I Z.

The Chairman's Charge; The Methods
of Proceeding in Trials of Criminals ; Mo-
tions and Trials of Causes relating to Set-
tlements; Determinations of Justices, &c.
with Variety of Cases thereupon.

To which is added,
The Power of Mayors of Corporations, &c.
given by Acts of Parliament.

By *G. F A C O B*, Gent.

In the S A V O R:
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APPENDIX

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APPENDIX

TO THE

Modern Justice, &c.

SINCE the writing of my *Modern Justice*, I have had Thoughts of an Addition to it of the particular Business and Proceedings in the Quarter-Sessions, especially of composing a proper Charge for the Worshipful the Chairmen of those ancient and honourable Courts, of the Proceedings of Attorneys, Solicitors, &c. in trying of Causes therein, and the extensive Power of Justices in their Determinations; which is, what I have pursu'd in the following Appendix. I shall begin with my Charge, which being perfectly new, I doubt not but it will be thoroughly acceptable to all Justices of the Peace.

But I take Leave to premise, that when the Justices are assembled, the Court is to be first proclaimed, the Commission to be read, Officers call'd, Juries sworn, &c. and then the Chairman is to proceed to his Charge.

B

Charge

Charge in the Quarter-Sessions.

THE Particulars of my Charge I am to give you, Gentlemen of the Jury, which are sworn in this Court, I shall deliver in an Alphabetical Method, and endeavour to acquit my self herein with the Conciseness necessary where so many Particulars are to be consulted, and in such a Manner as may cause a due Effect upon all Persons concern'd.

And first, as this Court takes Cognizance chiefly of Trespasses against the publick Peace, so you are by your Oaths oblig'd to enquire into Affrays; as where two or more Persons shall cause a Skirmishing or Fighting; and herein you are to observe, that there must be a Stroke given, or a Weapon drawn, otherwise 'tis not an Affray. Constables neglecting their Duties in endeavouring to suppress an Affray, are finable; and any Spectator may put a Stop to Affrayers assembled in a tumultuous Manner, and may apprehend the Offender, where a Person is dangerously wounded.

The next Head I shall mention to you is that of Ale-houses: You are to make strict Enquiry whether any Persons do keep Inns, or Ale-houses, without being licensed to the same, either in Sessions, or by two Justices, (*Quorum unus.*) Whether any Persons sell their Ale in unlawful Measures, and whether any Ale-house suppress'd, hath been licens'd by two other Justices out of the Sessions?

We are in this Court to enquire into Assaults committed; and in Assaults, a Man may not offer Violence to another, unless it be in Defence of his own Person, in Defence of his Wife, Father, Mother, Master, &c.

You are to enquire whether any Buyers, Sellers, or Transporters of Butter, Cheese, Corn, &c. presume to act as Badgers, without being legally licens'd in the Sessions by three Justices, and entering into Recognizances, according to the Directions of the Acts of Parliament?

If

If there are any Barretors, or common Disturbers of the Peace, within your Knowledge, Stirrers up of Suits, Oppressors of their Neighbours, &c. they are to be indicted and fined in this Court.

Where the two next Justices cannot agree in making their Order in Case of Bastardy; it is to be referred to the Sessions, but subject to return to the same two Justices with only the Direction of the Court; for in Bastardy, the Sessions cannot regularly make an original Order, tho' it may be appeal'd to on the Order made by the two Justices.

Persons committing Affrays, Assaults, Batteries, Riots, threatening to kill or wound others, &c. are to be bound over to appear at the Sessions, and to be of the Good Behaviour; and the Recognizances must be certified by the Justice at the next Sessions, or he shall forfeit the Sum of 10 l.

Enquiry is to be made in this Court, whether any Bridges are out of Repair? Whether the Officers neglect to assess, collect, or pay the Money for the Reparation of Bridges? And where it cannot be discover'd who ought to repair, it is to be presented by you Gentlemen of the Grand-Jury; whereupon an Order of Sessions is to be granted for laying a Tax on every Parish, &c. And herein it may be necessary to explain to you, that if a Man hath Profit by passing over a Bridge, he ought to repair it; and if a Bridge was built at first to serve a private Use, and afterwards becomes necessary for the Publick; the Person who built it, and not the County, is oblig'd to repair it.

You are likewise to enquire whether any Butchers sell, or cause to be sold, any Swines Flesh meased, or Cattle dying with the Murrain, or any unwholesome Meats; and whether they combine to sell at certain Prices, or vend their Meat at unreasonable Rates?

If any Man shall arrest a Minister, or Lay Person, going to, or returning from Church on a Sunday, he may be punish'd by Indictment, and be bound to the Good Behaviour. If any Person shall be convicted in Sessions of striking another in the Church, or drawing a Weapon with an Intent to strike him, he shall have Judgment to lose one of his Ears. And if a

An Appendix to

Parson shall marry without publishing the Bans or Licence, he may be here punish'd on Information.

The searching and sealing of Cloth is to be particularly inquir'd into ; and if any Clothier, or other Person, shall use Flocks, Hair, or other deceitful Stuff, in the making of Broad Cloth ; shall dye Cloth with Brasil, to make a false Colour, or shall withhold faulty Cloths, they are here to be presented and punish'd according to Law. And you are to take Notice that all Clothiers are to pay their Work-people such Wages as shall be assess'd in Sessions.

If any Cottage hath been built without the Allowance of the Lord of the Manor, and the Justices of Peace in Quarter-Sessions, and without laying of four Acres of Land to it ; it is here to be presented, and the Offenders to be punish'd.

You are to enquire whether any Person hath resisted or abus'd any Officer of the Customs in the Execution of his Office, which is an Offence finable in this Court : And if any Officer of the Customs shall take any Bribe, or Connive at any false Entry, he is here to be punish'd.

We are oblig'd in this Court to make an Enquiry into Escapes of Felons. The Person which suffers an Escape, is liable to be punish'd for the same Crime for which the Party escaping stood committed ; and if a Gaoler permit a Prisoner to go at large, tho' he returns, yet it is a negligent Escape, and finable. And to bail one not bailable by Law, is a negligent Escape. If a Felony be committed, and the Offender escape in the Day-time, the Vill shall be amerced ; but if the Escape be in the Night, the Vill shall be excus'd.

You are to make particular Enquiry into Larcenies and Felonies committed ; the Larceny which is triable and punishable in this Court, is what comes under the Denomination of *Petit Larceny* : And Persons getting Money or Goods falsely or deceitfully by Counterfeit Letters, &c. and which shall be thereof convicted in this Court, are here to be punish'd by Fine, Imprisonment, Pillory, &c.

Justices

Justices in Sessions have Power to redress Grievances relating to unlawful taking and destroying of Fish, where Conservators of Rivers and Stewards of Leets make Default; and if there be any such Crimes committed, you are to enquire into the same.

Forestallers, Ingrossers and Regrators, are punishable in this Court, so that you are to present Crimes of this Nature; and for the first Offence they forfeit the Goods, or the Value thereof, and are to suffer two Months Imprisonment without Bail; for the second Offence, double the Value of the Goods, and six Months Imprisonment; and for the third Offence, the Offender loseth all his Goods, is to stand in the Pillory, and be imprison'd during the King's Pleasure.

If any Person shall take Pheasants or Partridges with Engines, in another Man's Ground, without Licence, it is here punishable; and if Persons concern'd in unlawful Hunting in Chases, &c. in the Night-time, with Disguises, confess the Fact, they are here finable; but if they conceal the Hunting, it is Felony.

If any Person, by Fraud, in playing at Cards, Dice, or other Game, or by bearing a Share in the Stakes, &c. or by betting, win any Sum above 10 l. at one Time, such Person shall forfeit five Times the Value of the Sum so won, by Indictment.

If any Gaol, for securing Offenders against the Peace, shall be out of Repair, or insufficient, you, Gentlemen of the Grand Jury, are to make Presentment thereof, that a necessary Sum may be order'd by this Court, for the rebuilding, or repairing of the same, by a Rate or Tax on the several Hundreds and Divisions liable thereto.

Justices in their Quarter-Sessions have Power to order the enlarging or widening of Highways; and any Justice, upon his own Knowledge, may present in this Court Offences concerning Highways; upon which this Court may assess a Fine, tho' the Offender is absent; but if any Person shall be grieved by an Assessment made by Justices in their Petty Sessions, he may appeal to this Court for Redress.

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We are to examine in this Court into Houses of Correction, as every County is to have one at least, and the Government of the same; Whether the Persons sent thither are set at Work as they ought, and receive their due Punishments; and whether the Governors, or Officers of such Houses, do their Duties therein? Of all which, a true Account is to be render'd every Sessions.

Informations grounded on Penal Statutes are inquirable in this Court of Quarter-Sessions; but we cannot try an Information without particular Power reserv'd by some Statute, tho' we are to proceed by Indictment.

In this Sessions, (*Michaelmas*) we are to take from all Constables of Hundreds Returns of their Lists of the Names and Places of Residence of Persons qualified to serve on Juries, between the Age of Twenty-one and Seventy, order'd in *Midsummer* Sessions; and a Duplicate of these Lists the Clerk of the Peace is to deliver to the Sheriff. And in respect to Juries, we have Power to alter the Panel after 'tis return'd, to remove a Juror after he is sworn, on good Cause, and may impanel an Inquest, to enquire into Concealments of Jurors, and fine them.

If any Person shall sell Leather, not being sufficiently tanned and dried, he shall forfeit the same. And if any Person shall buy any Leather before it be searched and seal'd, or shall carry it out of the Fair, or Market, before register'd, it is in this Court to be presented, and the Offender punish'd. And if any Grievance happen in Determinations relating to the Duty on Leather, the Person suffering may appeal to this Court, whose Determinations shall be final.

Authors of Libels may be punish'd in this Court by Fine; and a Man may be indicted at the Sessions for writing a scandalous Letter concerning any one, as it tends to the Breach of the Peace; if a scandalous Letter be directed to the Party himself, this tends to the Breach of the Peace, and is sufficient Cause for Indictment; and a Person leaving a Libel in his House, without publishing it, may be indicted for not delivering the same to a Magistrate.

If any suspected Persons shall refuse to take the Oaths, being tender'd by two Justices, such Refusal is to be certified to this Court, and from hence into the Courts of King's Bench, whereupon the Offenders shall be adjudg'd Popish Recusants Convict, and as such he proceeded against.

If any Person shall be guilty of Perjury, it is here to be inquir'd into, and the Punishment of Perjury is generally a Fine of 20 l. and six Months Imprisonment, or be set in the Pillory in some publick Place; and if any Person shall suborn a Witness to give Testimony in any Court of Record, he shall forfeit 40 l.

If Overseers of the Poor refuse to accompt and pay the Money in their Hands to their Successors, they are to be committed by two Justices; and in Case they make a false Accompt, they are to be bound over to the Sessions, and here indicted. Poor Persons may be reliev'd by Order of Sessions, and Justices in Sessions have Power to tax any Parish within the County for the Relief of the Poor.

Where a Person is remov'd from one Parish to another by Vertue of a Warrant, or Order of two Justices, and the Churchwardens or Overseer refuse to receive him, they shall forfeit the Sum of 5 l. but the Party grieved may appeal to the Court of Quarter-Sessions of the County from whence the Party was remov'd. And if Creditors shall make Default in appearing against poor Prisoners according to the Summons, or shall refuse to give Security for the Maintenance of such Prisoners, we may in this Court of Quarter-Sessions discharge them from their Imprisonment.

All Recognizances are to be certified by Justices of Peace in this Court, unless they concern any Evidence against Felons, when they are to be certified to the next Gaol-Delivery: But we cannot in this Court award any Process upon a Recognizance forfeited; for in this Case we must certify the same with the Cause of Forfeiture into the Court of King's Bench, to be prosecuted there.

We are to enquire in this Court whether Constables of Hundreds do their Duties in presenting of

Popish Recusants; we are to cause Proclamation to be made, that Recusants surrender themselves to the Sheriff; and to record the Names of Persons refusing to take the Oaths; we have Power to proceed against Popish Bishops, Jesuits, or Priests, &c. to cause Abjuration to be made by Persons impugning the King's Authority in Causes Ecclesiastical; to punish Offenders affirming or maintaining the Power or Jurisdiction of any foreign Prelate or Potentate, and to disarm Papists, &c.

Justices in Sessions are to set the Prices of Salt; and we have Power to alter and correct the Prices thereof, and to punish Offenders selling at higher Rates, or refusing to sell at the Price set; we have likewise the Determination of Grievances relating to the Duties on Salt; and if a Ship shall sink, or be cast away, having Salt on Board, for which the Duty is paid, we may, on Proof thereof, grant a Certificate, which shall entitle the Bearer to buying the like Quantity of Salt discharged of Duty.

Single Persons, under the Age of thirty Years, and Women unmarried, above the Age of twelve Years, and under forty, refusing to go to Service, being warned by two Justices, are either to be sent to the House of Correction, or bound over to the Sessions; and we have Power in our Sessions, (*Easter*) to assess the Wages of Artificers, Labourers, Servants, &c. yearly, and to proclaim the same.

We are in this Court to appoint two Justices to view the Estreats of Sheriffs, and two Parts of them are to be indented and Sealed, both by the Justices and the Sheriff; one Part whereof to remain in the Hands of those Justices.

We are to examine, (Time of War) into the Accompts of Soldiers listed to serve in the Wars, which are to be transmitted to us by the three Justices before whom listed, &c. We are, in our Court of Quarter-Sessions, to appoint the Pay of Soldiers in their Quarters, to determine Accompts thereupon, and certify to the Pay-master, &c. And Officers not paying Quarters, &c. are to be punish'd in this Court. Rates for Carriages are to be made here; and Justices in their Quarter-Sessions have Power

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to charge every Parish towards a weekly Relief of maimed Soldiers or Mariners.

To this Court are to be certified all Convictions on the Statutes against profane Swearing and Cursing; and this Crime, (tho' common) is of a fatal Tendency, especially in the Cause of Religion.

If any Persons shall be aggrieved in respect to Tithes, and Determinations thereupon by two Justices of Peace, they may appeal to this Court, and we have here Power to reverse the Judgment of the two Justices, if we see Cause, or to confirm and award Costs.

In this Court of Quarter-Sessions it is a Branch of our Duty to appoint the Rates or Allowances per Mille, or otherwise, for the passing of Vagrants, to prevent Impositions upon Parishes by corrupt Officers; and to make Orders for the Reimbursing of Constables, &c. We are likewise to make Enquiry into the Defaults of Officers in the conveying of Vagabonds, and to punish the Offenders.

And Constables are at this Court to present Offenders for selling Corn, &c. in unlawful Measures; and if any Person shall offer to sell the same in Measures not seal'd according to the Statute, they are here to be punish'd.

Thus, Gentlemen, I have, with the utmost Brevity, gone thro' the several Particulars of my Charge, as well in what relates to the Juries and Officers attending this Court, as what concerns our selves on this honourable Bench, and I hope the several Persons concern'd will do their respective Duties with Cheerfulness, and acquit themselves like such as have a strict Regard to Justice, and the Proceedings and Authority of this Court.

Proceed-

Proceedings in the Quarter-Sessions.

WHEN the Charge is given as aforesaid, the Recognizances are call'd over by the Clerk of the Peace, (particularly of such Persons as are to prosecute and give Evidence) that so Bills of Indictment may be drawn.

The Bills being prepar'd, the Parties bound over, are sworn to give Evidence; then they are order'd to attend the Jury whilst the Court considers of the Matter of the Bill; unless the Matter be weighty or difficult, the Prosecution too violent, the Jury not able, &c. when the Evidence is to be given in Court that the Jury may receive proper Assistance.

When the Jury retire to consider of the Bill, they are on Examination of the Witnesses, either to find the Bill, or bring in *Ignoramus*; if they find the Bill, towards the End of the Sessions, the Gaoler is call'd upon to set his Prisoner at the Bar.

The Prisoner being brought to the Bar, the Cryer says to him, *A. B. hold up thy Hand, thou standest indicted by the Name of A. B. for stealing of, &c.* (reciting the Crime laid in the Indictment.) How sayst thou *A. B.* art thou guilty of this Felony, &c. whereof thou standest indicted, or not guilty?

If the Prisoner says Guilty, his Confession is immediately recorded, and he's set aside till Judgment: If he makes answer Not guilty, the Clerk says, *Culp. pri.* How wilt thou be try'd? And the Offender answers By God and his Country. If he refuses to make any Answer, but stands mute, it must be recorded; but he ought to be call'd upon at least three Times, and to be sufficiently admonish'd of the Grievousness of the Judgment *de pain fort & dure*.

When the Offender pleads Not guilty, (which is the common Plea) it is to be likewise recorded; and in this Manner all the Prisoners are to be arraign'd. And if there are two, three, or more, call them severally

verally thus: Thou *A. B.* hold up thy Hand, thou *C. D.* hold up thy Hand, &c. then say, You *A. B.* by the Name of *A. B.* &c. you *C. D.* by the Name of *C. D.* &c. stand indicted for, &c. then call them severally to plead; which being done, the Prosecutors are to attend, and the Jury are call'd upon their Panel thus;

You good Men that are return'd and impanel'd in this Court, to try the Issue join'd between our Sovereign Lord the King and the Prisoners at the Bar, answer to your Names: Then call them over; which done, and a full Jury appearing, make Proclamation, If any can inform the King's Attorney in this Court of any Treason, Murder, Felony, or other Misdemeanor, committed by *A. B.* &c. the Prisoner at the Bar, let them come forth.

Then say to the Prisoner, The Persons that you now hear call'd are to pass upon your Trial (if it be for Petty-Larceny) or to pass upon your Life and Death, if it be Felony, &c. If you intend to challenge them, you are to do it as they come to the Book, and before they are sworn.

Then swear the Jury, bidding them look upon the Prisoner; the Oath is as follows,

You shall well and truly try, and Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you have deliver'd in Charge; you shall true Verdict make, and bring in, upon Enquiry into the Crime mention'd in the Indictment, according to the Evidence that shall be given you; so help you God.

This being done, you are to acquaint the Jury with the particular Crimes of which the Prisoner at the Bar stands indicted; after the Indictment is recited; the Clerk of the Peace is to say, To which Indictment he hath pleaded Not guilty, and for his Trial hath put himself upon God and his Country; so that your Charge is to enquire whether he be guilty of the Felony, &c. whereof he stands indicted, or not? If you find him guilty, you are to make Enquiry into what Goods and Chattels, &c. he had at the Time that the said Felony, &c. was committed, or at any Time since.

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If you find him Not guilty, you shall enquire whether he did fly for it; if you find he fled for it, you shall enquire what Goods and Chattels he had at the Time of his Flight; but if you find him Not guilty, and that he did not fly for it, you shall then say no more upon this point.

Then call upon the Witnesses and swear them thus: *Thou art sworn to tell the truth, and nothing but the truth, so help you God.*

The Evidence that you shall give on the Behalf of our Sovereign Lord the King against A. B. Prisoner at the Bar, shall be the Truth; the whole Truth, and nothing but the Truth; so help you God.

When the Evidence is given, you are to set another Prisoner at the Bar, and say to the Jury, You are also to understand that C. D. stands likewise indicted before you at this Time, for that he on, &c. last past, stole, &c. (reciting the Substance of the Indictment) for which he hath been arraign'd, and pleaded thereto Not guilty; and for his Trial hath put himself upon God and this Country; you are therefore to enquire of him, as of your first Prisoner, (but this last is understood where the Offence is of the same Degree) and then hear your Evidence.

After the Evidence given, the Bailiff appointed is to be sworn to keep the Jury, thus:

You shall swear that you will keep this Jury without Meat, Drink, Fire, or Candle, till they shall bring in their Verdict; you shall permit no Persons to speak to them, neither shall you speak to them your self, any further than to ask them whether they are agreed; so help you God.

All Things being thus given in Charge, the Jury go to their Room and consider of the Matter; when they are agreed, and return'd within or near the Bar, the Prisoners are brought forth, and the Jury call'd over; who all appearing, the Prisoner is set to the Bar, and the Clerk of the Peace says, Look upon the Prisoner you Gentlemen of the Jury; How say you, is A. B. guilty of the Felony, &c. whereof he stands indicted, or Not guilty? If

If the Jury say Guilty, record it, and bid *A. B.* be taken away; if they say Not guilty, bid him down upon his Knees; then say, Gaoler set *C. D.* to the Bar, and do as before; and when the Verdict is given, then say, My Masters of the Jury, hearken to your Verdict as the Court hath recorded it; you say *A. B.* is Not guilty of the Felony, &c. whereof he stands indicted; you say *C. D.* is Guilty of the Felony, &c. whereof he stands indicted; and so of the rest, *mutatis mutandis*.

Then cause Proclamation to be made, and say, All Manner of Persons keep Silence while Sentence is given, upon Pain of Imprisonment. Then set the Prisoners to the Bar in their Order, and pronounce Sentence,

This is the Manner of proceeding against Criminals in the Quarter-Sessions; but it hath been question'd by some, Whether a Felon may be tried the same Sessions in which he is indicted? And it has been thought reasonable, at least, to defer it to another Sessions, when the Prisoner desires it. The Court is to be of Counsel with the Prisoner, and ought to advise him for his Good, not taking Advantage too strictly against him. And the Court may likewise be inform'd from a By-stander, especially a Man of the Law offering any Thing as *amicus Curie*, relating to the Trial.

The other Proceedings in the Quarter-Sessions, (relating chiefly to Settlements of poor Persons, Persons bound to the Good Behaviour, &c.) are usually done in the Absence of the Juries; and the Method thereof is as follows.

A Bill or Declaration is to be first fil'd with the Clerk of the Peace; which being read, the Plaintiff's Attorney opens the Cause, having first prepar'd a Breviate, containing all necessary Hints for his Pleading; (and herein you are to observe, that any Attorney, or Solicitor, has the Privilege of Pleading in this Court) producing Witnesses for the Justification of his Client, as he proceeds.

Then the Defendant's Attorney, or Counsel, pleads, and likewise examines Evidences as he proceeds to set aside the Plaintiff's Charge, and when
he

he has gone thro' his Defence, the Plaintiff's Counsel replies; whereupon the Chairman sums up the Evidence on both Sides, and gives it in Charge to the Jury, to do impartially; if so (setting forth the Particulars) you are to find for the Plaintiff; if so, for the Defendant.

The Defendant is to have a Copy of the Indictment before he pleads; and if there be any Insufficiency, he may plead it, whereupon the Indictment will be quash'd, or the Defendant may traverse till next Sessions. If no Bill be found, the Indictment is quash'd of Course.

The Usage in some Courts of Quarter-Sessions to discharge, or set aside Orders made in publick Sessions, upon Appeals; as in Case of Bastardy, touching Settlements, &c. intended to be final, is not esteem'd legal or allowable; for which see *Pridgeon's Case*; *Cro. Car.* 350.

And the Practice in some Counties, for four Justices to make Orders in their Chambers, after the Adjournment of the Sessions, in Matters of Importance, is so far from being legal, that it is punishable.

What I shall further take Notice of, in Relation to the Business of the Quarter-Sessions, is, to caution you, that the Proclamation mention'd 4 H. 7. c. 12. shall be read every Quarter-Sessions, on Pain of 20 s. for every Justice present. And to enumerate the several Officers which are to give their Attendance, and their particular Business, &c.

And first I shall mention the Justices themselves, who ought not only to appear and return such Recognizances and Examinations as they have taken since the last Sessions, but give Information touching Persons and Things, to facilitate the Prosecutions.

Next, the *Custos Rotularum* ought to be present himself, or his Deputy, the Clerk of the Peace, with the Rolls of the Sessions.

The Sheriff, or his Deputy, to receive the Fines, return Jurors, &c.

All Coroners are likewise oblig'd to attend the Justices in their Sessions.

Constables of Hundreds, Bailiffs of Liberties, and all other Officers to whom any Warrant is directed, are

are to appear and make Returns, give an Account of Process, &c.

The Gaoler is to attend, and bring thither the Prisoners sent to him by *Mittimus*, &c. all such Offenders whereof the Sessions usually deliver the Gaol, and to give an Account of all Criminals in his Custody, &c.

The Governour of the House of Correction is also to give in a particular Account of such Rogues, &c. as have been committed to his Charge.

All Jurors return'd by the Sheriff, by Vertue of Precepts, are likewise to appear.

And if any of these Persons make Default in their Appearance at the Sessions, they are punishable by Fine. The Time and Place when and where the Sessions is to be held; Offences punishable; and Authority of the Court in general. *Vide Tit. Sessions* p. 324.

Having now given the particular Business and Manner of Proceedings in the Court of Quarter-Sessions, I come to the several Statutes and Acts of Parliament, and Variety of Cases relating to the Transactions of Justices of Peace in the Sessions, &c. and their Power in Determinations.

Laws and Statutes relating to Justices of Peace in their Quarter-Sessions, &c. with adjudg'd Cases thereupon.

IF two Justices, or more, shall appoint their Sessions to be holden in one Place; and two, or more, other Justices shall assign another Place for keeping the same; some are of Opinion both Courts may be held, and that the Presentments of both are valid; but the Appearance of one is a Discharge of Service to the other. And other Persons are of Opinion, that there may not be more than one Sessions at one Time; and if there should, the Authority being equal, no Preference can be given; so that their Proceedings are void in both.

The Sessions may commit a Justice for Breach of the Peace, but it cannot meddle with Offences by Statute, when particular Power is not thereby given them. *Savil* 134. So much in general, I now proceed to Particulars.

Ale-houses.

IF any Person shall sell Ale, or Beer, to an unlicens'd Alehouse-keeper, (except for the Use of his Family) he shall forfeit 6s. 8d. per Barrel; one Moiety to the Prosecutor, and the other to the Poor; recoverable in the Sessions. Stat. 4. Jac. 1. c. 4.

A Man may not be indicted for keeping of an Ale-House without Licence, by reason the Statute of Ed. 6. appoints, That if any one shall keep an Ale-house without Licence, he shall be committed; whereupon the Justices of Peace are to imprison him. And this being no Offence at the Common Law, and the Statute appointing a Method of Prosecution, the Offender is to be punish'd according to such Method, and not otherwise. Palm. Rep. p. 388. Mich. Jac. 1. Rel. Rep. 2. p. 398. Term. Trin. 4 W. & M. B. R. Marriot's Case. *Ale-house-keepers not to be indicted.*

A Person was indicted for keeping of an Ale-house, and selling Ale without Licence, but not concluding *contra formam Statuti*, it was quash'd; and for that, at Common Law it was no Offence. Sound. Rep. 1. p. 249. Faulkner's Case. *Words necessary in Indictments.*

But Term. Pasch. 21 Car. 2. A Man was indicted for selling of Ale in unseal'd Pots, without concluding *contra formam Statuti*; and the Court declar'd, upon a Motion, to quash the Indictment, That Measures were by the Common Law, and the Statutes only ascertain'd them, so that the Indictment was good at the Common Law. Siderf. 1. p. 409.

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Apprentices.

Power of the Sessions in placing out Apprentices.

Apprentices may be plac'd out by Justices in Sessions to Masters out of the Parish, or Hundred. *Stat. 8 & 9 W. 3.* And Justices may punish or discharge a bad Apprentice, tho' they cannot punish a bad Master.

Seven Years Apprenticeship necessary.

All Aliens and Denizens are oblig'd to serve seven Years Apprenticeship, to entitle them to use any Handicraft-Trade within the Statute 5 *Eliz. c. 4.*

On Information against a Person for using the Trade of a Dyer, not having serv'd an Apprenticeship to that Trade; the Case appearing to be, that the Defendant was a Feltnaker, and dy'd his own Hats; he was acquitted, this being a Part of his Trade. *Noy's Rep. 133. Hunter versus Moon.*

Trades not within the Statute.

An Upholsterer is not within the Statute 5 *Eliz.* for it requires no great Skill to exercise this Trade. And the Trade of a Merchant-Taylor is not within the Statute. But it has been adjudg'd that a Barber and a Brewer are within the Statute.

A Man may keep a Shop within a Country Village, for the Convenience of the Inhabitants, and not be within the Statute. *Vent. Rep. 1. p. 51.*

Persons binding themselves Apprentices.

An Infant may voluntarily bind himself Apprentice; and after the seven Years are expir'd, he may lawfully exercise his Trade; but his Covenant, or Bond, shall not be obligatory, tho', if he misbehave himself, his Master may give him Correction. *Hill. 57. Car. 1. Cro. Car. p. 19. Gilbert versus Fletcher.*

Indentures of Apprentices in London are to be inroll'd within a Year; and if any Default be made by a Master, the Apprentice offering to come before the Chamberlain to have it done, such Apprentice may sue out his Indenture, and be discharg'd. *1 Roll. Rep. 2. p. 305.*

Upon

Upon Indictment against a Person for refusing to accept an Apprentice bound by the Churchwardens and Justices of Peace, according to the Direction of the Statute 42 Eliz. c. 2. it was resolv'd, That in such a Case a Man may not be compell'd to accept an Apprentice, for such may be a Thief, Spy on his Family, Enemy, &c. and would be of dangerous Consequence to the Master. *Term. Hil. 29 & 30 Car. 2. B. R. Vent. Rep. p. 325. Mich. 1 W. & M. Show. Rep. 76. Bug contra 2 Rep. Rep. 1st Part, p. 431. Newton's Case.*

No Man oblig'd to take Apprentices.

If a Man marries the Widow of a Tradesman, it is said he cannot exercise the Trade without serving an Apprenticeship to it. *Noy's Rep. p. 5.*

One Kildarby, at the Sessions of the Peace held in the County of *Suffex*, was indicted for using the Trade of a Woollen-Draper, not having serv'd an Apprenticeship to it, according to the Statute 5 Eliz. And the Indictment being remov'd into the Court of King's Bench by a *Cartiorari*, Judgment was there obtain'd against him, tho' he pleaded his Freedom of the City of *London*. *Mich. 21 Car. 2. Saund. Rep. 1. p. 311.*

Persons using Trades without serving Apprenticeships.

And using of a Trade for Profit and Gain, not confin'd to a particular Family, is an Exercising within the Intention of the Statute.

If any Person shall be in the Execution of his Office, he may when he is in the Execution of his Office, be arrested and imprisoned for this Misdemeanor. And if any Person shall bring a Child into a Parish, and leave it there unprovided for, a Constable may arrest him, and carry him before a Justice. But a Constable cannot justify the imprisonment of one for giving him any Language, or disturbing him in his Duty without a Warrant.

A Constable may not be arrested for exercising a Justice. A Constable may not be arrested from the execution of his Office on a Sunday, and other Festivals, unless he is a Justice of the Peace.

Artists.

Arrests.

*Arrests, when
may be made on
Suspicion.*

IN respect to Arrests by Justices, Suspicion of Felony only, where no Felony is committed, is not sufficient Cause to arrest a Man. But if a Felony has been committed, and a Person is suspected to have committed the same, such Person may be arrested. And common Fame of the County is a strong Cause of Suspicion, where a Felony is actually committed, *Term. Trin. Hill. 7 H. 4. Trin. 27 H. 8. fol. 23. a. pl. 22. Term. Trin. 11 Ed. 4. fol. 6. 6. 7. a. pl. 11. 7 Eliz. Dyer 236.*

*A Man may be
arrested in Case
of an Assault.*

Where a Person is beat and wounded, so that his Life is in danger, any Person may arrest and imprison a Man till it be known whether the Party wounded be in a way of living or dying, and be no false Imprisonment; for a Man may justify in such a Case. *Hill. 38 Ed. 3. Pasch. 10 H. 7. fol. 26. a. pl. 8.*

*Power of Justices, &c. in
Arrests.*

If any Person shall call a Justice of Peace Fool, when he is in the Execution of his Office, he may be arrested and imprison'd for this Misdemeanor. *Mich. 39 Eliz. Simons versus Sweet.* And if any Person shall bring a Child into a Parish, and leave it there unprovided for, a Constable may arrest him, and carry him before a Justice. But a Constable cannot justify the Imprisonment of one for giving him ill Language, or disturbing him in his Duty without a Warrant. *Sav. Rep. p. 97.*

*Illegal Arrests,
how punishable.*

A Constable was fin'd 20 l. for arresting a Person by a Process of the Good Behaviour from the Sessions, on a Sunday, and after the Person arrested had obtain'd a *Certiorari*. *21 Jac. I. c. 6.*

Assault.

Assault.

WHERE an Assault is made by one Man on the Person of another, a Constable may justify the seizing him. *Pasch. 11 H. 7.* *Constable may seize Assaulters*

Where a regular Process is awarded against any Person, and he is arrested thereupon; if he resists the Officer by drawing his Sword, or otherwise, the Officer may justify beating him. *Mich. 21 H. 7. fol. 39. a. pl. 51.*

And a right Owner of a Freehold may justify an Attempt to beat one, menacing to assault him, for the lawful Defence of his Freehold, Term, or Highway. *Pasch. 10 Ed. 4. fol. 6. b. pl. 15.* *In what Cases an Assault is justifiable.*

A Master may justify the stripping and whipping his negligent Apprentice with a Rod. And a Man may justify the confining, binding and beating a Lunatick attempting to burn a House, or injure himself or others. *Pasch. 21 Ed. 4. Hill. 22 Ed. 4. fol. 45. a. b. pl. 10.*

Tho' when a Man's Life is in danger, he may endeavour to make Resistance; yet if he which is assaulted may escape with his Life, or without being wounded, it is not lawful for him to beat or wound the Person of another. *Mich. 2 H. 4. fol. 8. a. pl. 41.* *In what Cases not.*

If Persons playing a Backsword, Football, or such Games, shall wound one another in their Play, it is no Breach of the Peace, by Reason it is done by Consent; but if one assault another after the Pastime is over, this is a Breach of the Peace. *Fitz. Abr. 244.* *Cudgel-playin &c. no Breach of the Peace.*

Bail.

Statute parti-
cularizing who
may be bail'd.

THE Statute of *Westm. 1. c. 15.* mentions parti-
cularly who are bailable, and who are not, by
the Law.

A Justice of Peace was fin'd *100 l.* for taking
Bail in a Case not bailable by Law. *Lower against*
Jafferys. Mich. 22 Jac. 1. Repb. Rep. p. 153. And if a
Justice of Peace refuse to admit a Man to Bail, where
the Matter is bailable, an Action lies against the Ju-
stice. *Style Rep. p. 182.*

What Crimes
bailable, and
what not?

Bail is not allowable by the Law for Murder ;
and where a Man kill'd another in his own Defence,
Bail was refus'd. See *Term. Pasch. 25. Ed. 3.* And if
any Man be wounded so that his Life is in Danger,
the Party who gave him the Wound being arrested,
shall not be bail'd till good Assurance be obtain'd
from skillful Surgeons, &c. whether the Man may
live or die. *Co. Inst. 2. 186. Roll's Rep. Mich. 13 Jac. 1.*
p. 268. pl. 43. B. R. Poyn's Case.

An Accessary in Murder is bailable, tho' a Princip-
al is not. *40 Ed. 3. Lib. Affiz. pl. 8.*

Barratry.

Barratry, Of-
fence of a mix'd
Nature.

BARRATRY is an Offence of a mix'd Nature, of
which the Justices of Peace cannot hold Plea,
by Verrue of their Commissions. *Adjudg'd Term.*
Hill. 17 Jac. 1. where a Man was indicted at the
Sessions of the Peace, and a *Certiorari* brought, where-
by the Indictment was remov'd into B. R. *Roll. Rep. 2.*
p. 151.

Bastardy.

Justices in Sessions have the same Power to do all Things concerning Bastards, that Justices in their several Counties have. *Stat. 3 Car. 1. c. 4.* *Power of Justices in Sessions.*

If Justices of Peace in their Sessions revoke an Order of two Justices for keeping a Bastard-Child, they are liable to keep the Child themselves, if no Father can be found. *Hil. 21 & 22 Car. 2. B. R. Vent. Rep. 1. p. 59.* *Justices revoking Orders, &c.*

The two Justices have no Power to commit any one for not performing their Order, but they are to bind him in a Recognizance to appear at the next Quarter-Sessions. *Mich. 3 Car. 1. Bulst. 2. p. 341. Hammond's Case.*

A Motion was made in the Quarter-Sessions to quash an Order made that one should keep his reputed Child, because he had kept him heretofore: But it not appearing by the Order, either that he was his Bastard, or his lawfully begotten Child, the Order was quash'd. *Style Rep. p. 154.* *In what Cases Orders to be quash'd.*

An Order for keeping of a Bastard-Child quash'd, because the Order did not direct how long the Party should keep the Child. See *Style Rep. 154.*

A Man being sentenc'd, by Justices of the Peace in the Sessions, to be the reputed Father of a Bastard-Child, cannot be impeach'd in the Spiritual Court, or elsewhere, by Reason 'tis by Authority of the Statute-Law. *Cro. Jac. 625. Webb against Cook.* *Authority of the Statute-Law in Bastardy.*

A Woman wrongly charging a Man with getting of a Bastard upon her Body, was order'd at the Quarter-Sessions to be committed to the House of Correction during her Life. But this was esteem'd more than the Justices had Authority to do. *Pasch 13 Car. 1. Cro. Car. 470.* *A Woman charging a Person wrongly.*

A Woman big with Child was by an Order of two Justices remov'd from one Parish to another, and there she was brought to Bed; the Parish to which

she was remov'd appeal'd at the next Sessions, and the Order was revers'd: Afterwards an Order was obtain'd from two Justices to send the Child back; that Parish appeal'd, but the Order was confirm'd. At last it was remov'd into B. R. And my Lord Chief Justice *Holt* gave his Opinion, that the Birth at the last Parish did not settle the Child there, by Reason it was under an illegal Order; Which Order being revers'd, the Matter is no more, than that they procur'd the Woman to go thither. *Corsham Parish against Westbury. Trin. Term. 3 Anne.*

Behaviour.

Extraordinary Cases in Good Behaviour.

A Man was indicted for a common Barretor; and after he was acquitted, he threatened the Witnesses, whereupon he was bound to his Good Behaviour. *Latch Rep. p. 5. Toplin's Case.*

Where a Man was bound to the Good Behaviour by Justices of the Peace, for refusing to obey their Order, it was held by the Court that they ought not to grant a *Superfedeas*; but they might grant a *Habeas Corpus*, and discharge him, if they saw Cause. *Bent. Rep. 301. Blacknell's Case.*

Reflecting on the Justices.

A Man may be bound to the Good Behaviour for saying, the Justices of Peace do not understand the Statutes. *Vent. Rep. 16.*

What Acts amount to a Forfeiture of Recognizances, for the Peace.

Procuring another to break the Peace, is a Forfeiture of the Recognizance for the Peace. *Br. Cases, fol. 77.* But to a Forfeiture of a Recognizance, there must be an actual Breach of the Peace by Affray, Battery, or the like. *Rel. Rep. p. 199. Stamp versus Hyde.*

Burg.

Burglary.

IF a Man have two Houses, and inhabits sometimes in one, and sometimes in the other, and the House which he doth not inhabit is broken in the Night, with an Intent to steal any Thing out of it, this is Burglary. *Poph. Rep. fol. 12.*

Burglary, where a Man hath two Houses.

Where Thieves come with an Intent to rob a Man, and finding the Door lock'd up, pretended they came to speak with him; and thereupon a Maid-Servant open'd the Door, and they came in and robb'd the House: This being in the Night, was adjudg'd Burglary; and their Intention being to rob; and getting the Door open by false Pretence, was *in fraudem legis*, and adjudg'd Burglary, tho' they did not break the House; for in Law this amounted to an actual breaking. *Kel. Rep. 42.*

Intention of Robbing, Burglary.

Term. Pasch. 17 Car. 2. a Solicitor was hang'd for breaking open a House, wherein were Goods of a considerable Value, in an Execution upon a Judgment obtain'd against a casual Ejector in C. B. It appearing upon the Evidence that the Solicitor did this with Intent to take the Goods, and had no Colour of Title to the House for his Client. *Sid. Rep. 254. Far's Case.*

Entering a House by false Process, Burglary.

And a Person, watching his Opportunity, open'd a Door in a Prison, whereupon a Prisoner (Murderer) follow'd him, and the Keeper of the outward Door not knowing them, open'd that to them, so that they both went out together; but the Prisoner being miss'd, they were both immediately apprehended; adjudg'd Felony in the Person opening the Door. *Kel. Rep. 45.*

Opening Doors for Prisoners to escape

Butter.

Butter.

*Packing up
corrupt Butter,
less than
Weight, &c.
Forfeiture by
Statute.*

THE Laws relating to Butter, and which give Power to Justices of Peace, in their Sessions, to examine into it, are created by *Stat. 13 & 14 Car. 2.* which enacts, 'That if any Person shall make up a Kilderkin of Butter less in Weight than One hundred and twelve Pounds, accounting sixteen Ounces to the Pound, a Firkin less than fifty-six Pounds, a Pot less than fourteen Pounds, besides the Casks and Pots; or if any Person shall pack up old and corrupt Butter with new and sound Butter, or Whey Butter with Butter made of Cream; or shall salt Butter with great Salt, or more Salt than will preserve it, they shall forfeit the Value of the Butter false pack'd, and six Times the Value of every Pound wanting; one Moiety to the Poor, and the other to the Informer, with double Costs.' *13 & 14 Car. 2. c. 26.*

The Sellers of Butter not delivering the Quantities aforesaid in every Kilderkin, to make Satisfaction at the Price for which it was sold; and Re-packers of Butter for Sale, to pay double the Value.

Casks for Butter to be mark'd, &c.

By this Statute it is likewise enacted, 'That if any Persons shall pack Butter for Sale in Casks not of sound, dry, well season'd Timber, marked with the Weight of the empty Cask, and the first Letters of their Christian Names and Surnames with an Iron Brand, they shall forfeit 10 s. for every Hundred Weight, and so for a greater and lesser Quantity, to be divided *ut supra*.'

If any Potter shall expose to Sale Pots for the packing of Butter, without the Weight of them mark'd on the out-side, and the first Letter of his Christian Name, and the Surname at length, he shall forfeit 1 s. for every Pot so expos'd to sale.

And

And Persons selling Butter, or offering the same to Sale in Pots not mark'd, as above, are liable to the Penalty of 2 s. for every Pot.

Penalty for selling Butter in Pots unmark'd.

Prosecution on this Act to be within four Months.

Certiorari.

WHERE a Riot, or forcible Entry is committed, and a *Certiorari* awarded to a Justice of Peace to certify the Indictment (or in any other Case of Indictment, where the Statute directs, that it shall not be certified till Bail be first taken) the Justices ought to make Return of the *Certiorari*, tho' the Party refuse to give Bail according to the Statute. *Sid. Rep. 1. p. 70.*

Return to be made of *Certioraries*.

It was resolv'd, that after a *Certiorari* brought, and tender of sufficient Sureties, according to the Statute 21 Jac. 1. c. 8. all the Proceedings of the Justices of Peace are *coram non Judice*. *Trin. 15 Car. 1. March Rep. 27.*

Justices not to proceed after a *Certiorari* brought, &c.

When an Indictment is remov'd by *Certiorari*, the Party desiring it is to enter in a Recognizance, with sufficient Sureties, to plead to the Indictment, and try the Issue; which Recognizance and *Certiorari* are to be certify'd in the Court of King's Bench. *Stat. 5 & 6 W. & M.*

In what Manner Indictments to be remov'd by *Certiorari*.

Church

Church and Church-yard.

*Persons absent-
ing from
Church, liable
to Penalties.*

IF any Persons, above the Age of sixteen, shall be convicted of absenting from Church for above a Month without lawful Cause, or shall frequent Conventicles, or perswade others to do it under a Pretence of the Exercise of Religion, (Protestant Dissenters excepted) they are to be committed till they conform themselves and submit; and if they refuse to conform, they shall in open Sessions abjure the Realm; and the Justices in Sessions are to certify the same at the next Assizes. *Stat. 35 Eliz. c. 2.*

Offenders refusing to abjure, shall forfeit all their Goods and Lands during Life, unless it be Feme Coverts, who by this Act are not compellable to abjure.

*As are likewise
Retainers of
such.*

If a Man shall keep or retain any Person in his House, as well Servants as others, which shall forbear to come to Church for a Month together, he is liable to the Penalty of 10*l.* per Month, unless he be a Protestant Dissenter. By *Stat. 3 Jac. 1. c. 4.* But no Man shall be punish'd for the Offences of his Wife against this Statute, neither shall any married Woman be chargeable with any Penalty inflicted by this Act.

*Cases on In-
dictments.*

An Indictment against a Person for not coming to Church, or against a Recusant, shall not be revers'd for want of Form, other than by direct Traverse to the Point of not coming to Church, or not receiving the Sacrament. *Stat. 3 Jac. 1.*

*Drawing a
Sword in a
Church,
there must be
an Intention to
strike.*

A Man was indicted for drawing his Sword in the Church against another, contrary to the Statute 3 *Ed. 6.* without mentioning with an Intention to strike him; and the Indictment was quash'd, for it must be drawn with an Intent to strike, or else it is not within the Statute. *Leon. Rep. Part 2. 188. Perchal's Case.*

An

An Indictment for striking in a Church-yard, without letting forth the County wherein the Church-yard was in the Indictment, tho' the same was in the Margin, discharg'd. See *Cro. Eliz.* 606. *Child's Case*.

Striking in a Church yard, how constru'd?

Upon an Indictment for striking in *St. Paul's Church-yard*, a Motion was made, that it being the Church-yard of a Cathedral, which is more common than others, it was not within the Statute; but it was held by the Court to be within the Statute.

Pasch. 33. Eliz. Cro. Eliz. p. 234.

Constables.

IF a Constable arrests a Felon, and carries him to the County-Gaol; but the Gaoler refuses to receive the Prisoner, the Constable may not let him go; if he does it is an Escape. *Adjudg'd Hill. Term.*

Constable not to let a Prisoner go.

Where an Alderman of London, chosen Constable in a Leet, was discharg'd upon a *Certiorari*, being oblig'd to attend in his Office of Alderman. *Vide Jones's Rep. p. 461. Aldy's Case.*

Who discharg'd from Office of Constable?

A *Certiorari* was granted to Justices of Peace to certify an Order made concerning a Complaint against a Steward of a Leet refusing to swear a Constable presented, and swearing another. And that the Justices upon Examination order'd, that the Person presented should serve the Office, and swore him accordingly. Exception was taken to the Order of the Justices, for that they had intermeddled in a Thing not within their Cognizance, as the Appointment of a Constable belongs to the Leet; and the Lord of the Leet ought, on Pain of Forfeiture of his Leet, to take Care that a Constable be there chosen. But the Exception was not allow'd, by Reason the Election of a Constable properly belongs to the Homage. And altho' the Justices of Peace have not originally the making of a Constable, yet it being a Matter of the Peace, it is within their Jurisdiction, and they have Power in their Sessions to examine into this Matter.

Power of Justices in choosing Constables.

Where-

Whereupon the Order of the Justices was confirm'd.
*Stephen's Case. Trin. Term. 34 Car. 2. B. R. Johns
 Rep. 2. p. 212.*

*Persons refusing
 to serve by Or-
 der of Justices.*

A Person disobeying the Order of Justices for taking the Office of Constable upon him, was committed to Gaol by the Justices at the Sessions; the Person refusing, alledging that he was not within the Liberty for which he was chosen. Adjudg'd that the Commitment was unjust, for he ought not to have been committed in this Case for disobeying the Order, but to have been indicted upon his Refusal; and if he was found to be within the Liberty, they might then assess a Fine, and commit him till Payment. *Cro. Car. 566.*

Cottages.

*Cottages, to be
 Houses for Ha-
 bitation.*

Indictment for erecting and continuing of a Cottage, without mentioning *pro habitations*, is wrong; for 'tis no Offence, unless it is inhabited, the Statute being made for the Prevention of Cottages for Habitation of poor Persons; and if a Cottage is apply'd to any other Use than a Dwelling-House, the Defendant is to shew it, otherwise it shall be intended to be built for Habitation. *Tarbridge's Case. Mich. 6 W. & M. B. R. Mod. Rep. 4. p. 315.*

*Time of com-
 mencing Prose-
 cutions.*

An Indictment upon the Statute 31 E. 12. for erecting a Cottage five Years past, without allotting four Acres of Land to it, as the Statute directs, and for continuing it ever since; adjudg'd ill, by Reason the Offender ought to have been indicted within the Space of two Years, and for that the Indictment did not set forth that the Continuance was voluntary. *Cro. Jac. 1. 603.*

*Continuance
 voluntary.*

*Indictments on
 Penal Laws.*

Penal Laws in Indictments are to be exactly pursu'd; and Exceptions in Indictments are disregarded; as an Exception was taken to an Indictment, for erecting a Cottage for Habitation, without mentioning its being inhabited as a Cottage, was not allow'd; and the very erecting is an Offence. *Styles Rep. p. 33.*

Deer

Deer-stealing.

ONE Pennoyer was convicted upon the Statutes of Deer-stealing, and it appearing by the Conviction that the Deer were not in a Place inclos'd; upon Motion, the Conviction was quash'd. *Term. Mich. 9 W. 3. in B. R.*

Deer to be in Places inclos'd.

If a Gentleman licence another to chase in his Park, such Person cannot bring others with him to hunt there, without particular Words in the Licence to empower him. But if a Licence be granted to him to chase, kill, and carry off Deer at his Pleasure, then he may bring others with him. *Crompt. Jurisd. 160.* And a Parker may not licence any one to hunt in his Master's Park. *Mam. 280.*

Licences for killing Deer.

Escape.

IF a Man receives a Felon, and suffers him to get away before Apprehension; this is no Escape, tho' he knows him to be a Felon, by reason he never was arrested. *9 H. 4. fol. 24.* But to let a Person go after he is arrested for Felony or Larceny, is a voluntary Escape.

Difference before and after Arrest.

To call to a Felon in a House from the Street, and tell him he arrests him, is no Arrest, notwithstanding there be a legal Warrant against the Offender. *27 Ed. 3. Lib. Affix. pl. 9.*

Calling to a Man no arrest.

Where a Man arrested for Felony, or other Crime, makes his Escape out of Prison, and is not immediately pursu'd and taken again, before the Pursuer loseth Sight of him, this is an Escape. *Fitz. Abr. N. 400.* And if on an Escape and Pursuit thereupon, the

Pursuit of a Person escaping.

the Pursuer happens to kill the Offender in bringing him back to Prison; this is an Escape, tho' he never lost Sight of him, 3 *Ed. 3.*

Escape in Sheriffs.

If a Sheriff returns a *Capi Corpus* on an Arrest for Felony, and is not ready with the Body at the Day, this is an Escape. 40 *Ed. 3. Lib. Affiz. pl. 42.*

Evidence and Examination.

Who may be Evidence?

A Person burnt in the Hand, will be admitted to give Evidence as well in Criminal, as in Civil Causes. Adjudg'd by Justice *Hyde. Kel. 37.*

Where an Action was brought against several Persons, Cause of Action being only against one, to invalidate their Evidence, and so appearing by Witnesses Justices adjudg'd it by Covin, and receiv'd their Testimony. *Savil's Rep. p. 34. Dymoke* and others.

Juror may be an Evidence.

A Juror may be an Evidence on Request of either Party, but then he is to be examin'd upon Oath openly in Court, where he is to declare his Knowledge, and he ought not to be examin'd by the rest of the Jurors in private. *Styles Rep. 233.*

Who may not be Evidence?

In a Trial concerning Repairs of Highways, those Persons who are chargeable to the Repairs, shall not be admitted as Evidences; but a Person in the Parish, no Way chargeable to such Reparations, will be a good Witness. *Trin. Hill. 14 & 15 Car. 2. 1 Kel. 435. pl. 23.*

Evidence where a Woman is slain.

A Man was indicted for forcible taking away, and marrying a Girl of fourteen Years of Age, having 5000 *l.* Fortune. Adjudg'd that she was a good Witness against him; for there being one continu'd Force upon her from the Beginning, 'till the Marriage, whatsoever was done by her whilst she was under the Violence was not to be regarded. 1 *Pent. 243. Brown's Case.*

A Firm

A First Husband was produc'd as a Witness against a Woman marrying a Second Husband, to prove the first Marriage. But the Court objected against his Testimony, and declar'd, that a Wife could not be admitted to give Evidence against her Husband, nor the Husband against the Wife, in any Case, except Treason; and the Reasons alledg'd were, That it might occasion implacable discord, and Domestick Jars *ad infinitum*. *Mary Grigg's Case. Mich. 12 Car. 2. B. R. Raym. Rep. 1.*

Husband and Wife not to be Evidence against each other.

A Justice of Peace may not commit an Offender till further Examination, for a longer Space than three Days. *Cro. Eliz. 819.*

Examination.

Felony.

TO pursue the Method of my Modern Justice, which I take particular Care of throughout this Appendix, I bring in under the Head of Felony, Larceny, Robbery, Rape, &c.

Felony, Larceny, Robbery, Rape, &c.

Taking and carrying away Wreck of the Sea, Waif and Stray, taking away Treasure found; or stealing of Writings, which concern an Inheritance, are no Felonies. *Fitz. Abr. 265. 22 Ed. 3. Term. Mich. 49 H. 6. fol. 14. a. b. pl. 9.*

What Acts are not Felony?

It is not Felony to cut down Trees, and carry them away; but if Trees cut down shall be afterwards stoln, that is Felony. *12 Ed. 3. Lib. Assiz. pl. 32.*

In cutting Trees.

If an Infant steal Goods before he is of Years of Discretion, this is not Felony. *Mich. 35 H. 6.*

Infants, &c.

If a Servant shall imbezil his Master's Goods, having neither general nor special Property in them, it is Felony by the Common Law. *Owen's Rep. 52. Holman's Case.* And the Statute 12 *Anna* enacts, 'That if any Servant shall purloin, imbezil, or make away his Master's Goods, &c. to the Value of 40 s. he shall be Guilty of Felony without Benefit of Clergy.'

Felony in Servants.

*Where Goods,
deliver'd to
Work people, are
embezzl'd.*

If a Tradesman shall deliver Goods to his Men to work in his House, and the Workmen steal away Part of them, it is Felony notwithstanding the Delivery to the Party, by Reason the Property is not alter'd by such Delivery, but still remains in the Owner, and the Goods were only deliver'd to work. Adjudg'd by Chief Justice Hyde. 16 Car. 2.

*Property of
Goods deliver'd.*

But there is such a Property in a Person to whom Goods are deliver'd, that if they are stoln from him by a third Person, he may prefer an Indictment. Term. Mich. 21 H. 7.

*Indictments
thereupon.*

One Trollop was indicted for stealing the Goods of M. B. and on the Trial it appear'd by Evidence that the Goods were not B's; but that he had the Possession and Care of them, being a Carrier, and they were stoln from him in his Journey. Adjudg'd in this Case, that tho' a Man hath not an absolute Property in the Goods deliver'd, yet he hath a possessory Property, sufficient to maintain the Indictment. *Kel. Rep. 39.*

*Felonies by
Husband and
Wife.*

Wife Not guilty.

If a Wife steal Goods with her Husband, or by the Compulsion or Command of her Husband; this is no Felony in her. And if Husband and Wife commit a Felony together, it is no Felony in the Wife, the Law supposing that the Wife doth it by Coercion of the Husband. 27 Ed. 3. *Lib. Affiz. pl. 40. Kel. Rep. 31.*

*Taking Goods,
Felony.*

But if a Wife alone shall steal Goods, or receive stoln Goods, or a Felon into her House, or lock them up in a Chest, knowing the Goods are stoln, and her Husband having no Knowledge thereof; this is Felony in the Wife. Term. Pasch. 15 Ed. 2.

If a Man shall break a House in the Day-time, and therein take Goods, and remove them from one Place to another in the same House, with an Intention of Theft, it is Felony by the Common Law; the taking them being a Possession and Stealing. *Kel. Rep. 31. Simson's Case.*

But one Joiner was indicted for stealing a Copper; and tho' by the Evidence it was made appear that the Copper was fix'd to the Freehold, and he broke it up, and carried it away, yet it was adjudg'd not Felony. *Kel. Rep. 29.*

A Lodger

A Lodger in an Inn rose in the Night, and carried Linen out of his Chamber into another Room, with an intent to steal it; and going to the Stable for his Horse, the Servant took him therewith; this was adjudg'd Felony. 27 Ed. 3. Lib. Affiz. pl. 39.

Intention of Theft makes the Felony.

On an Indictment against a Person for digging up the Graves of several Persons in the Night, and taking away their Winding-Sheets, afterwards interring their Bodies again. It was resolv'd that the Property of the Sheets remain'd in the Owner, whose they were, when us'd for that Purpose, and not the dead Persons; so the Indictment was good, and the Offender was found guilty of Felony, but had his Clergy. Co. Lit. 113. Haines's Case.

Robbing dead Persons.

Two Persons were indicted for breaking a House in the Day-time, no Body being therein, and stealing 40 l. the Manner of it being thus: One went up the Ladder, and enter'd the Chamber, where he took away the Money, his Companion holding the Ladder, and seeing him get into the Chamber. Adjudg'd Felony, without Clergy, in him that took the Money, but not in the other, tho' he assisted and took Part of the Money. Cro. Car. Jones 394.

Robbing of Houses.

A Man may be indicted for stealing from a Person unknown. 12 H. 7.

Theft unknown.

Where a Man is arraign'd of Felony, and it is found that he fled for the same; he shall not lose his Goods, which he had at the Time of his Flying, but at the Time of his Trial. Goldsb. Rep. pl. 35.

Loss of Goods in Felony.

If a Felon be apprehended, and afterwards makes an Escape, it is Felony in him who lets him escape. Term. Mich. 9 H. 4.

Felony in Escapes.

If two, three, or more Persons, steal together to the Value of 12 d. and more, it is Felony in them all. And if any Person at several Times steal several Parcels, which together make above the Value of 12 d. this is Felony. Fitz. Abr. Tit. Coron. No. 404, 415.

Stealing at several Times, &c.

A Jury may find the Goods stolen of less Value than 12 d. and so convict the Prisoner of Petty-Larceny only. Hetley's Rep. 66. Bromley's Case.

Power of Juries.

Force makes a Robbery of a House; for if the Door of a House be open, and a Thief enter in the Night and steal Goods; this is no Burglary, but Larceny.

Force, Distinction between Robbery and Felony.

ceny only, there being no Force; and 'tis Force which makes the Distinction between Robbery and Felony. *Kel. Rep.* 68.

Breaking
Trunks, &c.

If Persons in a House break open any Door, and steal Goods; or if they break open any Thing fix'd to the Freehold; as a Cupboard, Door in a Wall, &c. and steal any Thing, this is a Breaking of the House, and Burglary; but the breaking open a Trunk, &c. and taking away Money, is but Felony. *Kel. Rep.* 58.

Stealing a Cup
in a publick
House.

Stealing a Cup in a Room of a publick House after it is done with, adjudg'd Robbery, without Benefit of Clergy. See *Poph. Rep.* p. 84. *Bayne's Case.*

Servant robb'd,
Robbery of the
Master.

If a Servant is robb'd of his Master's Goods in the Sight of his Master, it shall be taken as a Robbery of the Master. *Style Rep.* p. 318.

Persons to be put
in fear.

A Man is robb'd of a Sum of Money upon the Highway; rul'd to be no Robbery, unless it be found that the Person was put in fear. *Dyer fol.* 224.

A Man was indicted at the Quarter-Sessions for breaking into a House, and stealing Goods and Money; but the Indictment was set aside, the Burglary not being laid to be done in the Night. *Savil's Rep.* 47.

Stealing of Wo-
men, Rape, &c.

It is not Felony to steal a Woman, unless Marriage, or Carnal Copulation ensue. *Co. Lit.* 20, 21.

If a Woman is taken and marry'd against her Will, this is no Marriage *de jure*, because the Woman is in fear, and so knows not what she doth; but it is a Marriage *de facto*, and Felony within the Statute. *Cro. Car.* 482, 488, &c. *Fulwood's Case.*

Persons making
the Crime Fe-
lony.

A Man caus'd an only Daughter of a Person of considerable Fortune to be allur'd from her Father's House down the *Thames* to see a Ship, and having her on Board, by Force and Threats carry'd her ashore and marry'd her. Adjudg'd no Felony, her Father having a Son at that Time; and to make this Crime Felony, the Female must be Maid, Widow, or Wife, that has Substance in Goods or Lands, or is Heir Apparent. *Hob. Rep.* 182. *Burton versus Morris.*

Power of
Husbands in
Rapes.

A Husband may prosecute for a Rape upon his Wife, after she is dead, and tho' he be divorc'd from her. *Mish.* 43 Ed. 3. fol. 23.

The

The Justices of Peace have Power to enquire, hear and determine all Felonies and Murders within the Verge ; for that their Authority and Jurisdiction is general throughout the whole County. *Co. Lit. 4, 46. b. 47. a.*

Justices to determine Felonies, &c.

Fish.

IF any Persons shall make use of Nets, or Engines, to destroy the Spawn or Fry of Fish, or shall take Salmon, Trouts, Barbel, &c. under the Sizes mention'd by the Statute 1 Eliz. they shall forfeit the Sum of 20 s. and the Nets or Engines ; recoverable in Sessions.

Taking Fish under Size, Penalty by Statute.

Persons fishing in the River *Severn* with any Net, or Engine, whereby Salmon, Trout, or Barbel, under the Length appointed by 1 Eliz. c. 17. shall be kill'd ; or fishing with any Net for Salmon-Peel, Trout, Carp, Barbel, Chub, or Grayling, the Mesh whereof shall be under two Inches and a half Square, from Knot to Knot, or above twenty Yards in Length, and two in Breadth ; or above fifty Yards in Length, and six in Breadth in the Wing of the Net, from *Ripplelock-Stake* to *Gloucester-Bridge*, in the same River ; or above sixty Yards in Length below *Gloucester-Bridge*, and six Yards in Breadth in the Wing of the Net ; or, as shall fish with more than one of those Nets at once, shall forfeit for every Offence 5 l. and the Instruments and Fish taken. 30 Car. 2. c. 9.

And if any Person shall water any Hemp, or Flax, in the said River, he shall likewise forfeit 5 l. One Moiety to the Prosecutor, and the other to the Poor.

Hemp, &c. thrown into Rivers.

The Lord's having the Soil, is sufficient Evidence for a Right of Fishing, in Case of a private River, and puts the Proof upon the Claimant. But if it be a River that flows and re-flows, there it is common to all ; and if any will appropriate a Privilege to himself, the Proof lies on his Side. *Hale.*

What gives a Right to Fishing ?

Forcible Entry, &c.

*Detainer of
Lands by Force,
no Excuse.*

Detainer of Lands by Force, for three Years, or more ; where a Man comes to them by an unlawful Title, shall not excuse the Punishment by the Justices. 8 H. 6. c. 9.

*Notice by others
of the Force.*

Where a Force is committed, or there's a Detainer of Possession by Force, a Justice is oblig'd to go to the Place and make Inquisition, tho' he receives Notice of it by others than the Party injur'd. And if the Force be found, he is to make Restitution. *Term. Mich. 7 Ed. 4.* And no other Justice of Peace can grant a *Superfedeas* to stay the Restitution. *Dyer 187.*

*Two Persons
concern'd.*

If two Persons come to a House, and one commits Force, but the other enters peaceably, it is Force in both. *Noy 136.*

*In what Cases
Justices may
remove the
Force.*

Where there are Tenants in Common, or Joint-Tenants of Lands, &c. and one of them puts the other out of Possession by Force ; a Justice of Peace is to enquire, remove the Force, and restore to the Possession. And if a Man takes a Distress for Rent with Force, a Commoner be with-held from his Common by Force ; or if any Person keeps his Beasts in the Ground of another by Force ; a Justice of Peace has Power to remove the Force, but he may not award Restitution. *Term. Mich. 21 Ed. 4. 10 H. 7. fol. 9. b. pl. 21. So of Tithes. 3 Cro. 201.*

*Possession not be
gain'd by Force,
where a Man
has Right.*

If a Man hath had a peaceable Possession of Lands for twenty Years, and is once remov'd from the Possession, he cannot justify the getting and detaining the same again by Force. And if a Man having Right to Lands, enter by Force, it is enquirable into by the Justice of Peace, tho' the Justice is to restore the ousted Person to his Possession. *Dyer 141. Term. Mich. 22 H. 6. fol. 18.*

Resti-

Restitution is to be made to the same Person *To whom Resti-*
 which was put out ; so that if a Man be put out of *tution to be*
 the Possession of Lands by Force, and dieth, the Ju- *made.*
 stices of Peace have no Power to give Restitution to
 his Heirs. The same, if Tenant for Years be ousted
 of his Term by Force, and dies before Inquisition,
 the Justices cannot restore the Executor to Posses-
 sion. And the same in all other Cases. But the Per-
 son committing the Force may be indicted, and fin'd
 by the Justices of Peace. 1 Leon. 327. Sover's Case.

A *Certiorari* was brought, where a Record of a *Offenders to be*
 Force was made by a Justice of Peace, but he omit- *committed, &c.*
 ted to commit the Offenders, and to fine and im- *by Justices.*
 prison them : Upon the Record in the Court of
 King's Bench a Motion was made, that the Offen-
 ders might be fin'd and imprison'd ; but the Court re-
 fus'd to do it, by Reason the Record of the Force
 was void, for want of Commitment immediately,
 according to the Direction of the Statutes. *Moor*
Rep. 848.

It has been held, that a Detainer may be without *Detainer with-*
 Force, and not be against the Peace. And in some *out Force, Dis-*
 Cases an Expulsion is implied ; as where a Disseisin *seisins.*
 is made of Lands, an Indictment may be laid against
 the Offenders. *Andrews against Cranwell. Cro. Jac.*
p. 31.

In every Indictment for Forcible Entry, the Estate *Reasons for*
 that the Party hath in the Premises ought to be *quashing*
 shewn. And an Indictment of Forcible Entry made *Indictments.*
 upon a Lease for so many Years, if a Person should
 so long live, was quash'd, for that it did not appear
 by the Indictment that the Lessee had any Title to the
 Land at the Time of the Force committed, and for
 that it was not averr'd that the Person was alive at
 the Time of the Forcible Entry. *Style's Rep. 147.*
Bray's Case.

In B. R. 23 Car. 1. two Exceptions were taken to *Exceptions to*
 an Indictment for a Forcible Entry ; the first was for *Indictments.*
 want of Addition of the County wherein the Party
 resided that made the first Entry ; and the second was
 for that the County wherein the Vill lay was not ex-
 press'd. And without these Additions, Process can-
 not be awarded against the Party. *Style's Rep. 26.*

*In what Cases
a Man may enter,
and be no
Force.*

A. having the Office of the Custody of a Castle for Life, by Grant from the Crown, and *B.* having the Inheritance thereof likewise by Grant from the Crown; *B.* sent his Servants with Furniture to prepare him a Lodging there. The Servants of *A.* shut the Doors upon them, and denied them Entrance. The Servants of *B.* forcibly open'd the Doors and enter'd. Resolv'd that this was not a Riot in the Servants of *B.* because the Castle did belong to *B.* and *A.* had only the Custody; so that the Possession of *A.* was the Possession of *B.* *Moor Rep.* 786.

Game and Gaming.

Game-keepers.

By the Statute 22 & 23 Car. 2. it is enacted, 'That Lords of Manors, or other Royalties, (not under the Degree of Esquires) may by Writing under Hand and Seal, authorize one or more Game-keepers to seize Guns, Bows, Grey-hounds, Setting-Dogs, Lurchers, or other Dogs, to kill Game; Ferrets, Trampels, Low-Bells, Hays, or other Nets; Hare-pipes, Snares, or other Engines for taking Hares, Pheasants, Partridges, or other Game, us'd within such Manors by Persons not qualified.'

Statutes relating to Game.

New Act.

But the Statute 3 G. enacts, 'That no Lord of a Manor shall appoint any Person to be his Game-keeper but his immediate Servant, or one qualified by the Law to kill Game, and not Tenants, &c. And if any Person not being legally qualified, or not being a Servant, &c. to any Lord of a Manor, shall under Pretence of any Deputation kill any Hare, Pheasant, &c. or use any Grey-hounds, Guns, Nets, &c. to destroy Game, he shall be liable to the Penalties § 9 *Anna.*'

Con-

Conviction for keeping a Gun contrary to the Statute 33 H. 8. The Conviction was for having a Gun in his House, without the Words, [use to keep in his House] according to the Statute: The Conviction was quash'd, the Words of the Statute not being pursu'd, and perhaps the Gun might be lent him. *Shower's Rep. 48.*

Convictions for keeping Guns.

A Man was convicted upon the Statute 33 H. 8. for keeping a Gun; and upon Proof it appear'd that he had not 100 l. per Ann. The Record of the Conviction being remov'd into the Court of King's Bench, Exception was taken to it, viz. *non habuisset 100 l. per Annum*, and not mentioning when: It might be that he had 100 l. per Annum at the Time when he kept the Gun, tho' not at the Time of his Conviction. It was answer'd, that the Words *non habuisset* shall relate to all Times past, and the Conclusion being *contra formam Statuti*, will explain such Words which seem to be doubtful. But the Court was of Opinion that this being a Conviction before a Justice of Peace, the Time when the Offence was committed, should be certainly alledg'd; and the Order was quash'd. *Term. Pasch. 2 W. & M. B. R. Silkot's Case.*

Anise Case on Conviction by Justices.

In Convictions for keeping of Guns, the Peace is not concern'd, so that the Justices of Peace have no Power to punish the Offenders for want of Jurisdiction; but the Party may be indicted before the Justices of Oyer and Terminer, &c. 4 Mod. Rep. 49. *King against Alsop.*

Justices not to inflict Punishments.

A Man was indicted for shooting of Game, but omitted shewing that he was not worth 100 l. per Ann. It was order'd by the Court, that he should show he was worth so much to discharge him. 2 Keb. 582.

Offenders to set forth Qualifications.

An Action was brought against a Person for entering another Man's Warren; the Defendant pleaded that there was a Pheasant on his Land, and his Hawk pursu'd it into the Plaintiff's Ground: Resolv'd that this doth not amount to a sufficient Justification, for in this Case he can only follow his Hawk, and not take the Game. 28 Ed. 3. Poph. 162.

Pursuing Game, how far lawful?

And

*Coming
on another's
Ground.*

And notwithstanding the Common Law justifies the hunting of Foxes, Badgers, and other ravenous Beasts of Prey, in the Ground of another Man, yet a Man may not dig to unearth them without Licence. *Rel. Abr.* 558.

If a Man in hunting starts a Hare upon his own Ground, and pursues it on the Ground of another, the Hare is still his own, and the Property of Hares is in them on whose Ground they remain; but if a Man starts a Hare upon another Man's Ground, and hunts and kills it there, he is subject to an Action. *Cro. Car.* 553. *Greenhill's Case.*

*Gaming.
Cock-pit an un-
lawful Game.*

A Person was convicted of keeping a Cock-pit: The Court resolv'd it to be an unlawful Game, within the Statute 33. H. 8. and fined him 40 s. a-day, viz. 12 l. for six Days. *Keb. Rep.* p. 3. 510.

Gaol and Gaoler.

*What Gaols
Justices to com-
mit to?*

Justices of Peace may not commit Felons and other Criminals to the Compters in London, and other Prisons than the common Gaols; for they can legally imprison no where but in the common Gaol. *Co. Lit.* 9. fol. 119. b. *Lord Sanchar's Case.* And Justices of Peace are to commit to the County-Gaol only. *Brown's Rep. Part 2. p. 41. Legate's Case.*

*Difference be-
tween the King's
Interest and ano-
ther Person's.*

If a Man making an Affray fly into a House when the Justice of Peace cometh to arrest him, the Justice may in fresh Suit break open the Doors and take him and carry him to Prison, tho' it be in another County; for this is a criminal Matter, and the King hath an Interest; and in such Case a Man's House shall not be a Refuge to him as it would be in Debt or Trespass, where the Interest is only to some common Person. *Term. Mich.* 13 H. 7. *Keb.* 41. *Term. Mich.* 22 Ed. 4. fol. 35. b. pl. 16.

An Action of False Imprisonment was brought against a Justice of Peace for detaining a Person longer than three Days, in his own House, to examine him, and not sending him to Gaol till further Examination. See *Brownl. Rep.* 2, 41. *False Imprisonment against a Justice.*

High-ways.

Justices of Peace are to hold a Sessions for the Highways every four Months, or they shall forfeit 5 l. one Moiety to the Prosecutor, the other for amending the Ways. *Stat. 3 & 4 W. & M. c. 12.* *Sessions to be held.*

All Highways, of common Right, are to be repaired by the Inhabitants of that Parish in which the Way lies, if there be no special Matter to fix the Repairs upon others. *Style Rep.* 364. *Ventris Rep.* 183. *Highways, by whom to be repaired of common Right?*

But *Term. Pasch. 7 Jac. 1.* it was agreed, That of common Right all the Country ought to repair a Highway, where no particular Persons are bound to repair, because the Country have their Ease and Passage by it. *Co. Rep.* 13, 33.

If a Way leads to a Market, is a Way for Travel- lers, and has Communication with a great Road, &c. it is a Highway; but if it lead only to a Church, to a Village, Fields, &c. there 'tis a private Way. *Vent. Rep.* 189. *What are Highways?*

An Indictment of a Nufance in a Horseway was quash'd, for it ought to have been the King's Highway, or the Highway. *Co. Lit.* 56. a. *Cro. Eliz.* p. 63.

In an Indictment against a Person for not repairing the High-ways, the Way was laid to be the King's Highway, and the common Street; but not mentioning for all the King's Liege-People, it was quash'd. *Term. Hil. 9. W. 3.* the King against *Saunders.* *Indictments quash'd.*

An

An Indictment not setting forth from what Place to what Place the Way did lead, was quash'd. See *Style's Rep.* 356.

A Hamlet not to be charg'd.

An Indictment against the Inhabitants of a Hamlet within a Parish, for not repairing the Highways, was quash'd, by Reason a Hamlet cannot be charg'd to repair a High-way, unless it be by Prescription, or for some other special Reason; but the whole Parish, or Vill, is to be charg'd. *Term. Mich. 1649. Style's Rep.* 163. Inhabitants of *Mile-end.*

Justices of Peace.

Justices may decide petty Quarrels.

IN petty Quarrels between Party and Party, or Breaches of the Peace, where the King is not entitled to a Fine, a Justice of Peace has Power to make and persuade an Agreement. *Noy Rep.* 103. But a Justice of Peace may be indicted for taking Money, or any corrupt Practices. And Justices of Peace are to meddle only with such Matters as the Statutes give them Power. *Br.* 114. *Sav. Rep.* 134. *Agard versus Caudish.*

Corruption in Justices punishable.

A Justice of Peace was indicted for compounding, and not returning Recognizances to the Sessions of the Peace, and for taking 10 s. of every unlicens'd Ale-house-keeper and other Misdemeanor, and was fin'd 1000 Marks. *Reb. Rep.* 1. Part 727. *Sir Purbeck Temple's Case.*

Disrespect to Justices finable.

Justices of Peace are to be respected in Sessions. A Person was order'd by Justices of Peace to take upon him an Office, or pay a Sum of Money, and he appeal'd to the Quarter-Sessions where the Order was confirm'd: Upon which he said to the Justices, [If I can't have Justice here, I'll have it elsewhere;] for which the Justices indicted him and fin'd him 5 l. And this was confirm'd in *B. R. Siderf. Rep.* 1. p. 144. pl. 26.

To call a Justice of Peace buffle-headed Fellow, to say he doth not understand Law, &c. are indictable. *Slander.*

Mod. Rep. 3. Part 139. The King against Darby.

By the Statute Justices of Peace in the Sessions are to adjourn Matters of Difficulty to the Judges of Assize, because they have the greater Power. *Difficult Matters to be referred to Judges.*

If a Commission of Oyer and Terminer issues to hear and determine Felonies, that determines the Commission of Justices of the Peace as to Felonies, but not as to the Peace. *Br. new Cases, fol 111. a. & b. pl. 509. What determines Commissions of the Peace?*

And when a new Commission of the Peace issues and is read, the former is determin'd, and all the Justices are to take Notice of it; and if they sit by the former, all they do is void. But if a Man, after he is nam'd in a Commission, has any Honour conferr'd on him; or if a Barrester at Law in Commission be call'd to be a Serjeant, he may act still by Vertue of that Commission. *36 H. 8. And what not.*

If a Justice of Peace does not observe the Form of Proceeding directed by the Statute, no Writ of Error will lie, because it is *coram non iudice*, and void. But if he doth act according to the Directions of the Statutes, then neither the King's Bench, nor the Justices in Sessions, can reverse what he has done. *Jones Rep. 170. Gale's Case. Justices to observe Form directed by Statutes.*

If a Justice of Peace refuses to examine a Person robb'd, on Request, an Action will lie against him upon the *Stat. 23 Eliz.* for the Justice in this Case doth not act as Judge of Record. *Lem. Rep. 323. Actions against Justices.*

Lewdness.

MY Modern Justice taking no Notice of Lewdness and Adultery, I think it necessary to insert a few extraordinary Cases under this Head, relating to Justices of Peace, collected from several Books of Reports.

*Adultery,
Breach of the
Peace.*

And first, Adultery being a Thing Temporal as well as Spiritual, is against the Peace, for every Man has a Right to repose in his own House with his Wife, Children, Goods and Chattels. *Term. Hill. 1 H. 7.* And committing Adultery with a Man's Wife, has been adjudg'd a greater Breach of the Peace than entering his House and robbing him.

Power of Courts.

Formerly the Court-Leet had a Power to enquire of, and punish Adultery and Fornication; and the King had in those Courts a Fine assess'd for those Offences, as appears by the Book of *Domesday. Co. 2. Inst. 488.*

*Constable ar-
resting Persons
at Bawdy-hou-
ses.*

A Constable having Information that a Person resorted to a common Bawdy-House, and there kept Company with lewd Women, one Night at twelve a-Clock went to the House with others to assist him, and arrested the Offender for a Breach of the Peace: Adjudg'd a good Justification on the Party's bringing an Action of False Imprisonment against him. *Mich. 13 H. 7. fol. 10. b. pl. 10.*

*Extraordinary
Case of Battery,
where Rape in-
tended.*

A Man was indicted at the *Old Baily*, for that *cataliter cognovit* an Infant under the Age of ten Years: But it could not be prov'd that he enter'd her Body; altho' he abus'd her very much; whereupon he was indicted of Battery, and on Conviction, was sentenced to be committed during the King's Pleasure, sh'd 200 Marks, to stand in the Pillory with a Paper upon his Head signifying the Cause, and to be bound to the Good Behaviour during Life.

Term.

Term. Mich. 15 Car. 2. Sir Charles Sedley was indicted for shewing his naked Body in a Balcony in *Covent-Garden* to a Multitude of People, and for other Misdemeanors. The Court declar'd, that it was high Time to suppress such Actions committed against all Modesty, and fin'd him 2000 Marks, imprison'd him for a Week, and bound him to the Good Behaviour for three Years. *1 Sid. Rep. 168. 1 Keb. 260.*

A Man shewing himself naked, punishable.

Libels.

ONE Saunders wrote a scandalous Letter to *Hatton Rich Esq;* Brother to the Earl of *Warwick*, who was indebted to him 300 *l.* after Rich had put himself into the King's Bench. The Letter was to this Effect, That if he had any Honesty, or Humanity, he would not deal so by him, and that he would be damn'd for cheating him, bringing several Quotations out of the Scripture for his Justification. The Court adjudg'd this Letter to be scandalous, and that being provocative, it tended to the Breach of the Peace; whereupon Saunders was fined 40 Marks. *Raym. Rep. 28.*

Scandalous Letters.

A Person indicted for publishing a scandalous Libel against a Man, before a Woman he intended to Marry. See *Sid. Rep. 1. p. 270.*

Against a Man's Preferment in Marriage.

Murder.

Murder.

Power of Justices in Murder.

Justices of the Peace have Authority to enquire of Murder, because it is Felony. And the Statute 10 Ed. 2. c. 2. impowers Justices of Peace to hear and determine Felonies.

In Cases of *Felo de se*, where the Corps is privately convey'd away, that the Coroner cannot have a View of the Body to enquire, the Justices of Peace may make Presentment of it, as it is Felony, to entitle the Crown to the Goods and Chattels. *Term. Pasch. 43 Eliz. in B. R. Huxley's Case.*

Words, not a sufficient Provocation.

No Words, be they what they will; as to call a Man Son of a Whore, or to give him the Lye, &c. are in Law adjudg'd such a Provocation as to diminish the Offence from Murder to Manslaughter; unless upon those Words, both the Parties suddenly fight, and one kills the other. *Kel. Rep. 55. Lord Morley's Case.*

Lookers on indictable.

If two Persons are fighting, and there are others looking on, who do not use their Endeavours to part them; and one of them is kill'd, the Lookers-on may be indicted and fined. *Noy Rep. 50.*

Persons revenging the Cause of a Friend.

Several Persons are playing at Bowls, two of them fall out, and a third, who had no Hand in the Quarrel, in revenge of his Friend, gave the other a Stroke with his Bowl, of which he died: This is Manslaughter only, happening on a sudden. *Co. Rep. 12. p. 87.*

Striking a Woman with Child.

If a Man happen to beat a Woman big with Child, and the Child when born hath Signs and Bruises in his Body, receiv'd by the Battery, and afterwards the Child dies; this is Murder in him that beat the Woman. *Contra*, if the Child be born dead. *Goldsb. Rep. 176.*

If twenty Persons come with an Intention of Murdering a Man, tho' but one of them kills him, yet they are all guilty of the Murder. *Term. Mich. 11 H. 4.* *Cases where several Persons are concern'd in Murder.*

A Man goes with Malice prepenſe to fight with another, and to kill him, and a third Person, on a sudden, without Malice, goes to take his Part, and they kill the other; this is Murder in him going with Malice, and Manſlaughter in his Companion. *Plow. Com. 100.*

If there be a Conſpiracy to kill a Man, but no Malice againſt his Servant; if the Servant be ſlain, the Malice againſt the Maſter ſhall be conſtru'd to extend to his Servant, and the Killing the Servant is Murder: Adjudg'd in *Salisbury's Caſe. 1 Mar.* *Malice againſt a Maſter extends to a Servant.*

If one gives Provocation, and ſends a Challenge, to another, and the other accepts it; whereupon they meet and fight; and he which ſends the Challenge is kill'd: This is Murder. For it is not material in the Law who begins the Quarrel, where a former Quarrel is depending, and the Malice ſtill continues until the laſt Stroke given. But if they are once reconcil'd for the firſt Matter, and afterwards happen to fall out again ſuddenly and fight, ſo that one of them is kill'd, it is but Manſlaughter. *Term. Paſch. 14 Jac. 1. Tavernor's Caſe.* *Persons kill'd on Challenges.*

A Man was indiſted for Murder, and it was reſolv'd, That if one Man kill another, and no ſudden Quarrel appears, this is Murder; and it lieth upon the Party indiſted to prove the ſudden Quarrel. *Kel. Rep. 26.* *Sudden Quarrel to be prov'd.*

Upon Words, two Men grew to Anger, but afterwards they ſubdu'd their Paſſion, and fell into other Diſcourſe for a Space of Time, as one might reaſonably ſuppoſe they might be reconcil'd; but ſome Time after they drew one upon the other and fought, wherein one of them was kill'd: Adjudg'd Murder. See *Kel. Rep. 36.* *Extraordinary Caſe.*

On Monday *A.* beat *B.* on Tueſday *B.* beat *A.* by taking him by the Noſe; on Wedneſday *A.* walking by *B.*'s Shop, made a wry Mouth at him; upon which *B.* came out of the Shop with a ſhort Sword, and gave *A.* a Stroke upon the Calf of the Leg, *Wounding at ſeveral Times.*

E

whereof

whereof he died: The Court directed the Jury to find this Murder. *Noy Rep. 171.*

Killing Servants, beating Children, &c.

A Man chided his Servant, but upon some cross Answer given, he having a hot Iron in his Hand, ran it into the Servant's Belly, of which he died: Adjudg'd Murder. *Kel. Rep. 64.*

But if a Master, or Parent, be provok'd to a Degree by some Fault of the Child, or Servant, and he corrects him with a moderate Weapon, and by Chance gives him an unlucky Stroke, whereof he dies, this is only Misadventure.

A Man pull'd by the Nose, killing only Man-slaughter.

If one Man shall pull another by the Nose, or philip him upon the Forehead, and he that is so assaulted shall draw his Sword, and immediately run the other thro'; this is but Man-slaughter, and the Peace is broken by the Person kill'd. *Style Rep. 467. Buckner's Case.*

Resentment to be proportionable to the Provocation.

If one Man be trespassing upon another, breaking his Hedges, or the like, and the Owner, or his Servant, shall, upon Sight thereof, take up an Hedge-Stake and give him a Stroke on the Head, whereof he dies; this is Murder, because it is a violent Act beyond the Proportion of the Provocation.

Rescuing Persons unlawfully restrain'd.

If a Man, perceiving that another is by Force restrain'd of his Liberty, or injuriously treated, shall, out of Compassion, rescue him, and in the doing thereof shall kill any of those who shall restrain him, this is only Man-slaughter, tho' the Person abus'd do not complain, or call for Assistance. Chief Justice Holt. *Hugel's Case.*

Opposing Bailiffs in Arrests, &c.

A Person was arrested, and another not knowing the Cause of the Struggle, but seeing Swords drawn, and to prevent Mischief, came and defended the Party arrested; and in the Scuffle the Bailiff was kill'd. It was agreed to be no Murder in him. But it was resolv'd that all that were present and assisting, knowing of the Arrest, were principal Murderers: And the Party was arrested and carried out of the Company by some of the Bailiffs before the Wound given. *Kel. Rep. 86. Sir Charles Stanley's Case.* But Sir Charles was pardon'd.

IF Bailiffs come to a House to arrest a Person, and the House being lock'd, they attempt to break in, whereupon the Son of the Person intended to be arrested, shoots and kills one of them; this adjudg'd Manslaughter, not Murder. *Jones 429.*

Killing a Man in one's own Defence is justifiable; but it must be upon such a Necessity, as to be adjudg'd inevitable, or it will not excuse. And it is not material who gives the first Stroke; for if he that kills the other flies as far as he can to save himself, and then is in such a Streight that he cannot fly further, whereupon he kills the other; this is in his own Defence. *Fitz. Coron. No. 284.*

What Acts may be done in Self-defence.

If two Persons play together with Sword and Buckler without the King's Leave, tho' by their own Consent, and one kills the other; this has been adjudg'd Felony. *Term. Pasch. 11 H. 7. Kellewey's Rep. 136.*

Playing with Swords.

Several Persons were indicted for conspiring to enter the King's Park, and for hunting, killing, and carrying away the Deer there, with Design of killing any one that should oppose them, they having made an Assault upon two of the Keeper's Servants, and kill'd one of them; tho' it was made appear that the Keeper's Servants began the Assault, and requir'd them first to stand; whereupon they fled, and one of the Keeper's Servants discharg'd a Piece at them; and notwithstanding they continu'd their Flight till one of the Keeper's Men laid violent Hands upon one of the Offenders, and then, and not before, they kill'd one of the Keeper's Servants; this was adjudg'd Murder; as they were doing an unlawful Act, the Law implies a Malice, and they ought not to have fled, but to have surrendered themselves. *Rel. Rep. 2. p. 120. The Case of Wormall and others.*

Nice Case of Murder in a Park.

If a Man puts Poison into Wine, or any Thing else, with an Intention of Poisoning another Person, and sets it in a Place where he may probably come and drink it; and by Accident he comes and drinks it, and dies, this has been adjudg'd Murder, (tho' there were no Malice) for the Law couples the Event with the Intention, and the End with the

Poison put in a Place with Design.

Cause. But preparing Ratsbane, and leaving it in proper Places to kill Rats and Mice, or other Vermin, and with no other Intent, is not Murder, tho' one finding it, shall eat thereof and die. *Mich. Term. 9 Jac. 1.*

Poison in Physick.

A Man being indispos'd, an Electuary was prescrib'd by a Doctor, and being prepar'd by an Apothecary, was sent to his House. His Wife, with Intent to poison her Husband, mix'd Ratsbane with the Preparation: The Husband and several other Persons take Part of it, and were all very much disorder'd, but recover'd by taking proper Medicines. The Doctor was complain'd to, who sent for the Apothecary and accus'd him: To clear himself, the Apothecary took of the Electuary himself and died; this was adjudg'd Murder. *1 Co. Lib. 9. Agnes Gore's Case.*

Poison given to a Person unknown.

A married Woman elop'd from her Husband, having two Daughters by him, and afterwards one of her Daughters made her a Visit, at which she enquir'd of the Health of her Father, and she was answer'd, He had a Cold; the Mother giving her a Paper, telling her, There was some good Powder for him, to be taken in his Posset: The Daughter carried Home the Powder, and telling her other Sister of it, she in her Absence gave the Powder to her Father in his Posset, which being Poison, it immediately kill'd him. Resolv'd the Wife was Principal in the Murder; but that the two Daughters were in no Fault, they being both ignorant of the Poison. *Kel. Rep. 53.*

Non-age, not regarded.

A young Woman, of the Age of thirteen Years, was burnt for killing of her Mistress. *Term. Trin. 12. Ed. 3.*

But Non compos excus'd.

But a Man *Non compos mentis*, shall not lose his Life, nor forfeit any Thing for Murder. *F. N. B. fol. 202. Term. Pasch. 1 Jac. 1. B. R. Co. Rep. 4. p. 124. Beverley's Case.*

Intention of Murder, how far punishable?

One Bacon was indicted for intending to Murder the Master of the Rolls, and for offering a Sum of Money to another Person to do it, saying, at the same Time, That if he would not perpetrate it, he would

would do it himself: Upon Conviction, it was mov'd, that this being an Intention only, was not indictable. But the Court declar'd, That it was a heinous Offence, and finable, whereupon he was fin'd One thousand Marks, committed to Prison for three Months, and order'd to find Sureties for his Good Behaviour during Life. *Term. Mich. 16 Car.*

2. *Levinz. Rep. 1. p. 146.*

Term Pasch. 16 Car. 2. A. and B. were indicted for a Misdemeanor, which was, That A. had challeng'd a Person by Way of Duelling, and sent it by B. to the Party challeng'd, B. knowing thereof: They were fin'd 100*l.* each, committed for a Month without Bail, sentenc'd to make such Recantation within that Time as the Court should direct, and to be of the Good Behaviour for seven Years. *1 Siderf. 186.* The King against *Darcy and Collins,*

Carrying a Challenge, finable.

Two Persons were playing at Foils, with Swords in Scabbards, and the Chape of the Scabbard of one of them fell off, unknown to him, upon a Thrust, so that the Sword enter'd the other's Belly, and kill'd him. Adjudg'd Manslaughter, and not Chancemedley: For these Actions not being warranted by Law, the Parties using them are at their Perils to guard against the Consequence: And tho' there be no Intention of Mischief, the Thrust being voluntary, is an Assault in Law. *Aleyn's Rep. 12.* Sir John Chichester's Case.

Playing at Foils, Manslaughter.

One *Rampton* was indicted for killing of his Wife: By the Evidence it appear'd that he found a Pistol in the Street, and shewing it to another Person, they took the Gun-stick and put it into the Pistol, and it went down into the Muzzle so far that they concluded it was not charg'd; and the Wife of *Rampton* standing near him, he pull'd up the Cock, and the Pistol, contrary to their Expectation, discharging, kill'd the Woman. Adjudg'd Manslaughter, and not Misadventure. *Kel. Rep. 41.*

Finding a Pistol by Accident and killing a Person.

*Accessaries in
Murder.*

Three Persons are present when one of them kills a Man, the other two abetting him that did the Fact, but committing no Act towards the Death of the Party. All three were indicted upon the Statute against Strabbing. The two are but Accessaries, the Statute 1 Jac. 1. c. 8. being a Penal Law, and as such to be taken strictly, and not extended. *Hill. Term. 23 Car. 1.*

But at Common Law, and in other Cases, it is otherways. For if a Man be present, and moves his Companion to strike another, and kill him, he is Principal, tho' he did not strike one Stroke. *Plow. Com. fol. 100.*

*Counselling the
killing a Child
in the Womb.*

An Adulterer counsell'd a Woman to kill her Infant when it should be born; adjudg'd Accessary, because the Counsel continu'd after the Child born. See *Dyer 186.*

Justices in Sessions, in Case of Murder, may enquire of Escapes, and certify them into the King's Bench. *Stat. 3 H. 7. c. 1.*

One Rumpus was indicted for killing of his Wife: By the Evidence it appear'd that he found a Pistol in the Street, and shewing it to another Person, they took the Gun-stick and put it into Rumpus's hand, and it went down into the Muzzle; so far that they concluded it was not charg'd; and the Wife of Rumpus standing near him, he pull'd up the Cock, and the Pistol, contrary to their Expectation, discharging, kill'd the Woman. Adjudg'd Manslaughter, and not Murder.

Poor.

WHERE a Father has no Settlement, there Birth gives a Settlement to Children: But where the Father hath a Settlement, and that is known, they shall be sent to the last Settlement of the Father. *Mich. 5 Anna.*

When Birth of a Child gives a Settlement.

If Parents of poor Children die in *Transitu*, the Children are to be provided for by the Parish where they were born; for the Place of Birth is a Settlement certain, and Parents wandering with them afterwards will not alter the Case. *Bulst. Rep. 351.*

A Servant was hir'd first from *Lady-day* to *Michaelmas*, and from thence to *Michaelmas* following; adjudg'd a good Settlement, for there was Hiring for a Year. But it must be one entire Hiring, and one entire Service, (tho' different Times are mention'd) for one whole Year, that must make a Settlement according to the Statute. *Hil. 10 W. 3. Stephenson versus Overton.*

Servants hir'd for a Year, &c.

A Man hired a Maid-servant for a Year, but she falling sick, her Master turn'd her out of his Service; the Servant, in her Passage to the Place of her Nativity, begg'd for Relief, and she was sent, as a Vagrant to the Place where she was born: Whereupon she was sent back by that Parish to the Parish where she was a hir'd Servant, but by Order of Sessions she was settled at the Place of her Birth. This was remov'd by *Certiorari*, and the Court determin'd the Settlement to be at the Place where she was a hir'd Servant, and not where she was born. *Style 168.*

Servant falling sick, and turn'd away.

An Order of Sessions was made for removing a poor Man and his Family, as being a settled Inhabitant in another Place, by remaining above

Notices of Removal to other Parishes.

forty Days after taking an House, and being rated to the Poor there. Agreed by the Court, that in respect to Settlement within the new Statute, coming into the Parish publickly, taking a House, and being rated to the Poor on the Parish-Book, is sufficient Notice, without giving any Notice in Writing to the Churchwardens; and the Statute is made against private and clandestine Removals, and not publick ones, which the Parish can take Notice of it self. *Show. Rep. 12.*

*Extraordinary
Case on Appeal.*

A Man serv'd an Apprenticeship in a Parish where he married and had several Children; his Wife dying, he married another Woman, who had a Term for Years in another Parish, to which Place he remov'd, and resided there for a Year; afterwards he return'd to the first Parish, was rated to the Poor, liv'd there two Years, and then he died. In a short Space after his Death, his Widow and Children were remov'd by an Order of two Justices to the other Parish where he liv'd a Year; but upon Appeal to this Order at the Sessions, the Sessions declar'd them to be Inhabitants in the first Parish. *Term. Mich. 3 Jac. 2. The King against the Inhabitants of Maldon.*

*Relations
charge-ble for
Mainten. & vice.*

A Grand-Child of a Woman is chargeable to a Parish; the Grandmother, being a Person of Ability, marries, the Husband is a Grandfather within the Statute 43 Eliz. c. 2. and liable to maintain the poor Grand-Child. Otherwise, if the Husband has no Estate with the Grandmother. *Bullst. Rep. 345.*

*Impotency, &c.
on y to be re-
liev'd.*

An Order was made at the Sessions, that a Man should maintain his Daughter, and allow her 20 d. a Week for her Subsistence; the Order was quash'd, because it did not appear by the same that she was unable to work, or that she was sick, aged, or impotent, and therefore not within the Statute. *13 W. 3. in B. R. James Mendoxa's Case.*

*To be main-
tain'd in Or-
der.*

And if Justices of Peace in Sessions make Orders for Parishes to provide Houses, or to give any Persons Maintenance, who are not impotent, but able to work, or having any Thing to live upon; Those Orders are against Law. And Justices in Sessions

fions cannot transfer their Authority over to others, as to appoint other Justices to make an Order, &c. *Bull. Rep. 347. Style's Rep. 154.*

But it is a standing Rule in the Court of King's Bench, that if upon an Appeal the Order of two Justices is either affirm'd or quash'd upon the Merits of the Case, in Relation to Settlements, it shall be conclusive between the two Parishes. *Pasch. 10 Annæ. Bishop-Waltham against Foram.* *Proceedings on Appeals final.*

Term. Pasch. 29 Car. 2. A Motion was made to set aside an Order of Sessions, for the settling a poor Person in a Parish, sent thither by Warrant of two Justices, and confirm'd in the Sessions upon an Appeal. And the Court refus'd to enter into the Merits of the Cause; the Order of Sessions being in this Case final, unless it be made appear that there is an Error in the Form of Proceeding. *Ventriss's Rep. 310.*

Justices of Peace in the County of Middlesex, at their Easter Sessions yearly, are to rate the several Parishes at a certain Sum, to be paid weekly, not exceeding 6*d.* on each Parish, towards Relief of poor Prisoners in the King's Bench, Marshalsea, Hospitals and Alms houses, in their Jurisdictions. By Stat. *43 Eliz. c. 2.* *Justices to relieve poor Prisoners in the King's Bench, &c.*

Justices of Peace have likewise Power in the Quarter-Sessions, to provide a Stock to set poor Prisoners committed for Felony and other Misdemeanors to work, in such Manner as other County-Charges are levied, and to appoint Overseers, order their Accounts, and punish Abuses. *Stat. 19 Car. 2. c. 4.* *Have Power to provide a Stock. &c.*

Riot.

The Month adjudg'd for Enquiry.

Indictment for a Riot quash'd, for want of three Persons.

Justices when excus'd for Default in Enquiry.

Riot.

IN Enquiry into Riots, which Justices of Peace are oblig'd by the Statute to make in a Month, it has been held that the Month shall not be confin'd to eight and twenty Days; but to the Almanack Month; for this being no Penal Law, it is only Directory of the Punishment of an Offence at Common Law. *Siderf. 10 p. 186.*

Three Persons were indicted for assembling themselves together in a riotous Manner, and making a Rescous. One was acquitted, and the other two found guilty: But because two cannot make a Riot, (there must be three at least) the Indictment was quash'd. *Bentl. Rep. 194. Harrison's Case.*

Where a Riot is committed, and the Justices of Peace have no Notice of it, they are not liable to the Penalty of 100 l. inflicted by the Statute 13 H. 4. unless it be a very notorious and dangerous Riot. *Dyer 210.*

Aggrants.

Vagrants.

AN Infant, under the Age of seven Years, no Vagrant. See *Bull. Rep. 2. p. 351.*
 If a hir'd Servant falling sick shall be turn'd out of Door by her Master, and she begs in her Passage from the Place where she was at Service, to the Place where she was born. Adjudg'd no Begging to make her a Vagrant. *Style's Rep. 108.*

Infants not Vagrants.
Servant begging in return Home thro' Sickness, no Vagrant.

A Man was indicted for being a wandering Pedlar, carrying with him Wares for Sale in private Houses, and not in open Markets; setting forth the particular Goods he sold. The Court adjudg'd him to be a Vagabond, and a Pedlar and Wanderer within the Intent of the Statutes. *Cro. Jac. 577.*

Pedlars when adjudg'd Vagrants.

Wages

Wages of Servants, &c.

How Justices to
assess Servants
Wages.

THE Justices are to consult considerate Persons of the County, in rating of Servants Wages, and have regard to Plenty and Scarcity, and other Circumstances, in their Determinations. *Bridgm. Rep. 118.*

And the Statutes require that the greatest Part of the Justices resident within the County are to be present at the rating of Servants Wages.

What Servants
within the Sta-
tute.

An Order was made by Justices of Peace for a Gentleman to pay his Coachman the Wages agreed on. A *Certiorari* was awarded to remove the Order, and it was mov'd that the Statute of 5 *Eliz. c. 4.* doth not extend to Coachmen, or any other Servants, than what belong to Husbandry. And so adjudg'd by the Court, whereupon the Order was quash'd. *Term Pasch. 28 Car. 2. Jones's Rep. 2. Deval's Case.*

And Gardening is not Husbandry within the Statute ; it being more for Ornament than Profit.

Wages

Watch,

Watch.

WA T C H and Ward is to be kept at Night in every Street throughout the Suburbs of London and Westminster, both in Winter and Summer. And Term. Mich. 16 Car. 2. in B. R. the Court directed an Order to the Justices of Peace and the Sheriff, charging them therewith. And the Court likewise order'd that a Rate should be made on all the Inhabitants there, to defray the Expence. *Siderf. Rep. 1. p. 218.*

Rates to be made for Discharge of the Watch.

I have now presented to the Reader a Collection of extraordinary Statutes, and Variety of select Cases from Books of Reports, &c. relating to the Proceedings of Justices of Peace in the Quarter-Sessions, not comprehended in my *Modern Justice*, (as my Design therein was chiefly to assist the diligent Justice in the Dispatch of his Business out of the Sessions) and I hope this small Performance will be of general Use to those worthy Gentlemen in their Determinations. I shall proceed in the next Place to set forth the Power of Mayors and other Magistrates of Corporations (who are Justices of Peace *pro tempore*) given by Acts of Parliament, and conclude with the Commissions granted by the Crown to Justices, whereby they are empower'd to act.

Conclusion.

The

The Power of Mayors, &c. given by Act of Parliament.

Armour, Affray, &c.

PERSONS carrying Guns charg'd, and having offensive Weapons, or Armour, in Fairs, &c. to make Affrays, may be arrested, and their Armour seiz'd by Mayors, Constables, &c. *Stat. 2 Ed. 3. c. 3.*

Ale-houses.

By the Statute 3 Car. 1. c. 3. Mayors of Corporations, &c. are empower'd to convict unlicens'd Ale-house keepers, and to levy the Penalties.

Chief Officers of Towns are to cause Quart and Pint Pots, for the selling of Ale, to be markt, after Examination into their being full Measure, or shall forfeit 5 l. *Stat. 11 & 12 W. 3.*

And by the Statute 23 H. 8. Mayors, &c. have Power to assess the Prizes of Ale and Beer.

Bread.

Mayors, Bailiffs, and Lords of Leets, have Power to regulate the Assize of Bread, and examine into the Goodness thereof; and if Bakers make unlawful Bread, they may give it to the Poor, and pillory the Offenders, &c. *Stat. 52 H. 3. c. 6.*

Common-Prayer and Church.

Mayors, &c. may enquire into Offences against the Stat. 1 Eliz. c. 2. which directs the Common-Prayer to be read, and that Churchwardens do their Duty in presenting the Names of such Persons as absent themselves from Church on Sundays, &c.

Cloth, and Clothiers.

Chief Officers in Corporations are to appoint and swear Overseers or Searchers to examine into Cloth, whether it be faulty or not, or are liable to a Penalty of 5 l. by Stat. 39 Eliz. c. 20.

And

And by the Statute 23 *Eliz.* a Mayor may seize and burn Logwood in the Possession of any Person for the Use of Dying.

Where Goods are convey'd away, for which Customs are to be paid, before Entry made, and the Duties agreed, the chief Magistrate of the Port, or Place next adjoining, is to issue out his Warrant for the Apprehension of the Offender; and the Constable may break open a House to seize the Goods in the Day-time, if Resistance be offer'd. *Stat. 12 Car. 2. c. 14.* *Customs.*

And if any Person shall abuse a Custom-house Officer, the next Magistrate may commit him till the next Sessions. By *Stat. 14 Car. 2. c. 11.*

By the Statute 4 *Jac. c. 5.* a head Officer has Power on View, Confession, or Proof by one Witness, to convict any Person of Drunkenness, and fine him 5 *s.* or commit him to the Stocks for six Hours. And for the second Offence to bind him to the Good Behaviour. *Drunkenness.*

Persons sitting tippling in an Ale-house, Inn, or Tavern, are likewise punishable by Mayors; such Offenders shall forfeit 3 *s.* 4 *d.* for the Use of the Poor, or be set in the Stocks four Hours. And the Ale-house-keeper, &c. permitting tippling, is liable to a Penalty of 10 *s.*

Mayors and other chief Officers are to enquire into unlawful Games against the Statute 33 *H. 8. c. 9.* As Apprentices, or Servants, playing at Tables, Cards, Dice, Bowls, &c. using Bear-baiting, &c. on Sundays, or Persons meeting out of their Parishes for any Sports; which incur a Forfeiture of 3 *s.* 4 *d.* or to be set in the Stocks for three Hours. *Games and gaming.*

Mayors, Constables, and head Officers, are likewise empower'd to search Places suspected to be unlawful Gaming-Houses; and Offenders of this Nature to forfeit 40 *s.* And by the same Statute 33 *H. 8.* to commit such as they find playing at unlawful Games.

Mayors

Leather.

Mayors and head Officers in Corporate and Market-Towns, and Lords of Liberties and their Stewards, are to appoint and swear yearly two skilful Men to be Searchers and Sealers of Leather, on Pain of 40 s. And such Persons not doing their Duties, are liable likewise to the Penalty of 40 s. And refusing to execute the Office, shall forfeit 10 l. *Stat. 1 Jac. 1. c. 22.*

Mayors, &c. are likewise to appoint Triers of insufficient Leather, and of Leather Wares. And Triers not doing their Offices without Delay, forfeit 5 l. by the same Statute.

Orchards robbed, Hedge-breaking, &c.

Persons robbing Orchards, Hedge-Breakers, &c. are punishable by Mayors. And a Person being convicted by the Oath of one Witness, shall pay to the Person griev'd such Damage as the Mayor shall think fit, or shall be whipp'd. *Statute 43 Eliz. c. 7.*

Plague.

In a Time of Sickness, Mayors, &c. may tax Inhabitants for the Relief of Persons visited with the Plague, and by warrant levy the same by Distress, &c. or on Refusal may commit Persons. *1 Jac. c. 31.*

They are to appoint Searchers, Watchmen, Keepers and Buriers of the Dead; and if any Persons infected with the Plague, shall go abroad having an infectious Sore, after a Head Officer shall have commanded them to keep Home, it is Felony; and if they have no Sores about them, they shall be punish'd as Vagabonds.

Servants and Apprentices, &c.

Mayors, &c. may hear and determine Matters relating to Servants and Apprentices; by Statute 5 Eliz. c. 4. And in Harvest-time, upon request, may cause Persons, fit for Labour, to work by the Day; and if they refuse, may put them in the Stocks. They may likewise licence Labourers to go to their Work from one County to another.

Swearing.

If any Person shall profanely swear or curse in the Presence of a Mayor, &c. or shall be convicted thereof by the Oaths of two Witnesses, he shall forfeit for every Offence 1 s. to the Use of the Poor, or shall be set in the Stocks three Hours. *Stat. 21 Jac. c. 20. 3 Car. c. 4, &c.*

And the Statute 6 & 7 W. 3. confines the Forfeiture of 1 s. to Servants, Labourers, &c. other Persons being order'd to pay 2 s. and double, treble, &c. on repeating the Offence.

Mayors, &c. of Ports, may Arrest Soldiers depart-
ing without Licence. 18 H. 6. c. 19.

And if Soldiers having Relief by Order of Justices shall beg, they shall be punish'd as Vagabonds.

Vagrants, or other loose, idle and disorderly Persons, blind, lame, &c. or pretending to be so, found begging in the Streets, a Mayor, Constable, &c. may cause them to be whipp'd on offending a second Time. Stat. 12 Anne, c. 13.

In every City, Borough and Town, there shall be a common Bushel sealed. Stat. 11 H. 6. c. 8. And Mayors or chief Officers are to provide a Mark for the sealing of Weights and Measures; and if they refuse or delay to seal, they shall forfeit 40 s. Stat. 7 H. 7. c. 4. The Fees allow'd are 1 d. for sealing a Bushel, and a Half penny for every other Measure; 1 d. for every Hundred Weight, half a Hundred a Half penny, and less Weights one Farthing.

Mayors, &c. are to punish Offenders touching false Weights, and if they permit Persons to sell by Measures not seal'd, or neglect to punish them; or shall seal Weights not agreeable to the Standard in the Exchequer, &c. they forfeit 5 l.

Mayors, &c. have Power to inspect and order the Word, Faggots, Size of Faggot, Billet, Tale-Wood, &c. 43 Eliz. &c.

c. 14.

F

A Com

A Commission to Justices of the Peace.

GEORGE by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, &c. To A. B. of, &c. C. D. E. F. &c. in the County of Gloucester, Esqrs. greeting; Know ye, That we have authoriz'd and assign'd you, and every one of you, jointly and severally, our Justices, to keep our Peace in the County of Gloucester aforesaid, and to keep and cause to be kept all Ordinances and Statutes made for the Good of the Peace, and for the Conservation of the same, and for the quiet Rule and Government of our People in all and every the Articles thereof in our said County, (as well within the Liberties as without) according to the Force, Form, and Effect of the same; and to chastise and punish all Persons offending against those Ordinances or Statutes, or any of them, in the County aforesaid, as according to the Form of those Ordinances shall be fit to be done: And to cause to come before you, or any of you, all those Persons who shall threaten any of our People in their Persons, or in burning their Houses, to find sufficient Security for the Peace, or for the Good Behaviour towards us and the People; and if they shall refuse to find such Security, then to cause them to be kept safe in Prison until they procure the same. We have also assigned you, and every two or more of you, our Justices to enquire by the Oath of good and lawful Men of our County aforesaid, by whom the Truth may be better known, of all and all Manner of Felonies, Trepasses, Forestallings, Ingrossings, and Extortions whatsoever, and of all and singular other Offences

Offences and Misdemeanours, of which Justices of the Peace may or ought lawfully to enquire, by whomsoever or howsoever done or perpetrated, which hereafter shall happen to be done or attempted in the County aforesaid; and particularly of all those who in the County aforesaid shall presume to go or ride in Companies with armed Force against the Peace, to the Disturbance of the People; and also of all those who in like Manner have lain in wait, or hereafter shall presume to lie in wait: And also of Inn-holders, and of all and singular other Persons who have offended or attempted, or hereafter shall presume to offend or attempt in the Abuse of Weights or Measures, or in the Sale of Victuals, against the Form of the Ordinances or Statutes, or any of them in that Behalf made for the common Good of *England*, and the People thereof, in the County aforesaid; And also to enquire of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers and other Officers whatsoever, who, in the Execution of their Offices about the Premises, or any of them, have unlawfully demean'd themselves, or hereafter shall presume unlawfully to demean themselves, or have been, or hereafter shall be careless, remiss, or negligent in the County aforesaid; and of all and singular Articles and Circumstances, and all other Things whatsoever, by whomsoever and howsoever done or perpetrated, in the County aforesaid, or which hereafter shall happen to be howsoever done or attempted in any Wise, concerning the Truth of the Premises, or any of them; and to inspect all Indictments whatsoever before you, or any of you, taken, or to be taken, or made or taken before others, late Justices of the Peace in the County aforesaid, and not as yet determin'd; and to make and continue the Process thereupon against all and singular the Persons so indicted, or which hereafter shall happen to be indicted before you, until they be apprehended, render themselves or be out-lawed. And to hear and determine all and singular the Felonies,

Felonies, Trespasses, ForeSTALLINGS, Regratings, Ingrossings, Extortions, unlawful Assemblies, and Indictments aforesaid, and all and singular other the Premises, according to the Laws and Statutes of *England*, as in like Cases hath been us'd, or ought to be done : And to chastise and punish the said Persons offending, and every of them, for their Offences, by Fines, Forfeitures, Amerciaments, or otherwise, as ought and hath been likewise us'd to be done, according to the Laws and Customs of *England*, and the Form of the Ordinances and Statutes aforesaid. ~~Provided~~ ^{Provided} always, That if a Case of Difficulty, upon the Determination of any of the Premises, shall happen to arise before you, or any two or more of you, then you, or any two or more of you, do not proceed to give Judgment therein, except it be in the Presence of one of the Justices of one or other Bench, or Justices of Assize in the County aforesaid. And therefore, we command you, and every of you, that you diligently attend the keeping of the Peace, Ordinances, Statutes, and all and singular other the Premises ; and at certain Days and Places which you, or any such two or more of you, as aforesaid, shall in that Behalf appoint, to make Enquiry, and hear and determine all and singular the Premises, and fulfil and perform the same in Form aforesaid, doing therein that which to Justice appertains, according to the Laws and Custom of *England*, saving to us the Amerciaments and other Things to us thereof belonging. And we command, by Vertue of these Presents, the Sheriff of the said County of *Gloucester* for the Time being, that at certain Days and Places which you, or any two, or more of you, as aforesaid, shall make known to him, as aforesaid, he cause to come before you, or such two or more of you, as aforesaid, such and as many good and lawful Men of his Bailiwick, (as well within Liberties as without) by whom the Truth in the Premises

ses may be the better known and enquir'd of.
 Lastly, We have assign'd you the said A. B.
 Keeper of the Rolls in the said County; And
 therefore you shall cause to be brought before
 you and your said Fellows, at the said Days
 and Places, the Writs, Precepts, Processess, and
 Indictments aforesaid, that the same may be in-
 spected, and by a due Proceeding determin'd as
 aforesaid. Given at, &c. this Day, &c.

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